

MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JANUARY 8, 2007

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Domingo Montalvo, Jr. led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

Councilmembers present were: Mayor Bryce D. Kocian, Councilmembers V. L. Wiley, Jr., David Samuelson, Ken Freese, Don Mueller, and Domingo Montalvo, Jr.

Councilmember absent was: Ray Linseisen.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Stavena, Police Chief Tim Guin, Public Works Director Phil Bush, EMS Director John Kowalik, Planning Director Prudencio Arriaga, Sr., and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Billie Jones, Jim Cody, Jim Cockrell, Carlos Cotton, Jake Silva, Michelle Silva, and Anthony Silva.

The second item on the agenda was Roll Call and Excused Absences. Councilmember David Samuelson made a motion to excuse the absence of Councilmember Ray Linseisen from the Regular City Council meeting held January 8, 2007. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. Jim Cockrell addressed the City Council regarding the downtown accessibility. He stated that it was hard for persons in wheelchairs and with walkers to access the downtown area. He requested the City Council look into the accessibility for the downtown area.

Mr. Jake Silva addressed the City Council regarding "No Smoking." He presented and read a letter to City Council, as follows: "Many towns and cities have a law that prohibits smoking in public places. Wouldn't it be nice if the City of Wharton could also pass a law to keep people from smoking in public places? I think it is a good law because the smoke is bad for your lungs and heart. Even though I'm only 10, I don't think it is fair that my body gets messed up when I walk into a place where people are smoking. I'm sure that nobody wants lung or heart diseases that can hurt you very badly or even kill you. Smoke also makes people with allergies or asthma sicker when they are around it. Besides the health reasons, the smell of cigarette smoke is really horrible. It is difficult to enjoy a meal out when all you taste is someone else's smoke. Also, you

really stink after leaving a place filled with smoke. My mom makes me take a bath and wash my hair as soon as we get home. Please consider this idea. I'm sure that there are many citizens in Wharton who would agree."

Ms. Billie Jones addressed the City Council regarding Wharton County Leadership. She stated that on December 12, 2006, Wharton County Leadership heard from the City of Wharton's Staff. She stated that the presentation was conducted in a professional manner and expressed appreciation to the City Staff for their contribution towards the program. She stated that Wharton County Leadership had been in effect for the past twenty years. She then stated that the leadership class was scheduled for a trip to Austin on March 12-13, 2007. She then offered an invitation to the City Council to visit Austin with the leadership class. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese publicly commended the Wharton Fire Department for the emergency response efforts to the fire in downtown Wharton.

Councilmember David Samuelson publicly commended Mr. Mays for the Holiday Light Show in Caney Trails. He stated that Mr. Mays raised approximately \$3,000 and over 500 pounds of food for Share.

Councilmember V. L. Wiley, Jr. stated that the M.L.K. parade was scheduled for Saturday, January 13, 2007 at 10:00 a.m. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meeting held December 11, 2006. After some discussion, Councilmember Ken Freese made a motion to approve the Wharton City Council minutes of the regular meeting held December 11, 2006 as presented. Councilmember David Samuelson seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider ***Third and Final Reading: Ordinance:*** an ordinance granting to Centerpoint Energy Houston Electric, LLC, the Right, Privilege and Franchise to use the Public Rights-of-Way and to use, license, or exploit the Company's facilities within the Public Rights-of-Way to conduct an electric delivery business in the City of Wharton and for such other business purposes as the Company may desire from time to time, specifically including, but not limited to, the granting of access to those facilities for the delivery of broadband over power lines or similar service within the City of Wharton, Texas. City Manager Andres Garza, Jr. presented a draft ordinance that would amend and extend the current franchise agreement between the City of Wharton and Centerpoint Energy. He stated that the City's existing franchise agreement with Centerpoint Energy would expire in February 2008. He stated that the draft ordinance would extend the existing franchise agreement for an additional twenty years after the termination date currently in effect. He then presented a copy of the settlement term sheet supplement that indicated the amounts of the annual franchise payments that had been paid to the City of Wharton from 1998 to 2005. He said that the new franchise payment had been calculated to be \$512,365.18, which was the base amount defined as the higher of the average of two highest payments during 1998 – 2005 or the highest payment since deregulation (payments between 2002 and 2005). He stated that in order for the franchise to be

effective and in accordance with the City Charter, the ordinance must be read by the City Council during three separate regular meetings. He then presented a copy of the City Charter, Section 117, Franchises; maximum life; power of council. He stated that the first reading of the ordinance was held during the November 13, 2006 regular City Council meeting and the second reading was held during the regular December 11, 2006 City Council meeting. He stated that this would be the third and final reading of the ordinance upon approval by the City Council. After some discussion, Councilmember David Samuelson made a motion to approve Ordinance No. 2006-23, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2006-23**

**AN ORDINANCE GRANTING TO CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC THE RIGHT, PRIVILEGE AND FRANCHISE TO USE THE PUBLIC RIGHTS-OF-WAY AND TO USE, LICENSE, OR EXPLOIT THE COMPANY'S FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY TO CONDUCT AN ELECTRIC DELIVERY BUSINESS IN THE CITY AND FOR SUCH OTHER BUSINESS PURPOSES AS THE COMPANY MAY DESIRE FROM TIME TO TIME, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, THE GRANTING OF ACCESS TO THOSE FACILITIES FOR THE DELIVERY OF BROADBAND OVER POWER LINES OR SIMILAR SERVICE WITHIN THE CITY OF WHARTON, TEXAS.**

\* \* \* \* \*

**WHEREAS**, City of Wharton, Texas Ordinance dated December 17, 1957 (the "Prior Franchise") granted an electrical lighting and power franchise to Houston Lighting & Power Company, for a term expiring February 1, 2008; and

**WHEREAS**, Company is the successor to Reliant Energy, Incorporated ("REI"), which was the successor to Houston Lighting & Power Company, by virtue of a corporate restructuring of REI that occurred in August 2002, in which REI was merged with and into an indirect wholly owned subsidiary of CenterPoint Energy, Inc., which was converted into a limited liability company and was renamed CenterPoint Energy Houston Electric, LLC; and

**WHEREAS**, Company owns and operates an electric delivery business within the corporate limits of the City and Company is willing to continue to provide electric delivery services within the corporate limits of the City; and

**WHEREAS**, it is hereby found and determined by the City Council of the City of Wharton that it is in the best interests of the City that the Prior Franchise granting to the Company the right to use the public rights-of-way to conduct an electric delivery business in the city and for such other business purposes as the company may desire from time to time be amended and extended to the earlier of an additional twenty (20) year term to February 1, 2028 subject to the terms and conditions described in this ordinance; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:**

**Section 1.** That the facts contained in the preamble to the Ordinance are determined to be true and correct and are hereby adopted.

**Section 2.** Definitions.

*Annual Adjustment Factor* has the meaning set forth in Section 11 below.

*Annual Franchise Fee* has the meaning set forth in Section 11 below.

*Broadband over Power Lines (BPL)* or "*Access BPL*" has the same meaning as that used by the Federal Communications Commission in Section 15.3 of its Rules as reprinted below:

Access Broadband over Power Line (Access BPL). A carrier current system installed and operated on an electric utility service as an unintentional radiator that sends radio frequency energy on frequencies between 1.705 MHz and 80 MHz over medium voltage lines or over low voltage lines to provide broadband communications and is located on the supply side of the utility service's points of interconnection with customer premises. Access BPL does not include power line carrier systems as defined in Section 15.3(t) of this part or In-House BPL as defined in Section 15.3(gg) of this part.

*City* means the City of Wharton, Texas, a municipal corporation of the State of Texas.

*City Council* means the governing body of the City, or its designee.

*Company* means CenterPoint Energy Houston Electric, LLC, a Texas limited liability company.

*Effective Date* means the first day of the month in which the Franchise receives final passage by the governing body of the City.

*First Rate Case* has the meaning set forth in Section 14 below.

*Force Majeure* means forces or conditions not reasonably within the control of a party, including a strike; war or act of war (whether an actual declaration of war is made or not); insurrection; riot; act of public enemy; accident; fire; flood or other act of God; sabotage; shortages in materials, supplies and equipment; governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of services; unforeseen and unusual demands for service; or other events, where the affected party has exercised all due care in the prevention thereof and such causes or other events are without the fault or negligence of the affected party.

*Franchise* means this Ordinance and the rights and privileges granted by this Ordinance.

*Franchise Year* has the meaning set forth in Section 11, below.

*Franchise Area* means the area within the boundaries of the City as of the Effective Date and as same may change from time to time during the term of the Franchise.

*Initial Franchise Period* shall have the meaning set forth in Section 11, below.

*Other Services* means any service, exclusive of the transmission and distribution of electricity, provided or allowed to be provided through the use or license of the System for a fee, including but not limited to BPL.

*Person* means any individual, firm, partnership, association, corporation, company or organization of any kind.

*Prior Franchise* has the meaning set forth in the first Whereas clause, above.

*Public Rights-of-Way* means the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.

*Public Works Improvement Projects* has the meaning set forth in Section 5, below.

*PUC* means the Public Utility Commission of Texas or its successor agency with equivalent jurisdiction.

*Retail Customer* means any Person taking delivery of electricity from Company, at a point of delivery within the Franchise Area.

*Street* means the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

*System* means the Company's facilities erected, constructed, maintained, operated, used, extended, removed, replaced, and repaired, as necessary, by Company pursuant to this Franchise, including without limitation, all poles, pole lines, towers, transmission lines, wires, guys, conduits, cables, and other desirable instrumentality's and appurtenances (including telegraph and telephone poles and wires for use of Company), necessary and proper for the purpose of transmitting and distributing electricity to the City and the inhabitants of said City or other Persons, for any purpose for which electricity may be used.

**Section 3.** Subject to the terms, conditions and provisions of this Franchise, City hereby grants to Company the right, privilege and franchise to use City's Public Rights-of-Way to construct, maintain, operate and use Company's System to conduct within the City an electric delivery business and the right to use, license, or exploit the System within the Public Rights-of-Way for Other Services. This Franchise does not restrict City's right to impose reasonable fees upon third parties for the use of the Public Rights-of-Way to provide Other Services, so long as such fees are assessed on a non-discriminatory basis with those charged to other companies providing services competitive with the Other Services.

**Section 4.** Upon the filing with City by Company of the acceptance required hereunder, the Prior Franchise shall be amended by replacing the language thereof, in its entirety, with the language of this Franchise; and the term thereof shall be extended, and it shall remain in full force and effect for an additional term and period of twenty (20) years from and after February 1, 2008.

**Section 5.** All poles erected by Company pursuant to the authority herein granted shall be of sound material and reasonably straight, and shall be so set that they shall not interfere with the flow of water in any gutter or drain, and so that the same shall interfere as little as practicable with the ordinary travel, on the Streets or other Public Rights-of-Way. Within the Streets or other Public Rights-of-Way of City, the location and route of all poles, stubs, guys, anchors, lines, conduits and cables placed and constructed and to be placed and constructed by Company in the construction and maintenance of Company's System in the City, shall be subject to the reasonable and proper regulation, control and direction of City, or of any City official to whom such duties have or may be duly delegated, which regulation and control shall include, but not by way of limitation, the right to require in writing, to the extent provided in Section 10, the relocation of Company's System at Company's cost within the Streets or other Public Rights-of-Way whenever such shall be reasonably necessary to accommodate improvement projects within such Streets or Public Rights-of-Way by the city department with primary responsibility for public works projects ("Public Works Improvement Projects").

**Section 6.** In consideration for the compensation set forth in Sections 11 and 15, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use; and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

**Section 7.** Following completion of work in Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases shall comply with all valid City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No Street or other Public Right-of-Way shall be encumbered by construction, maintenance or removal work by Company for a longer period than shall be necessary to execute such work.

**Section 8.** The service furnished hereunder to City and its inhabitants shall be first-class in all respects, considering all circumstances, and Company shall furnish the grade of service to Retail Customers as provided by its rate schedules and shall maintain its System in reasonable operating condition during the continuance of this Franchise. Company's tariffs shall govern the rates, access to service, terms and quality of electric delivery services provided by Company. An exception to this requirement is automatically in effect when due to Force Majeure. In any Force Majeure event, Company shall do all things reasonably within its power to restore normal service.

**Section 9.** Company, on the written request of any person, shall remove or raise or lower its wires temporarily to permit construction work in the vicinity thereof or to permit the moving of vessels, houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Company may require such payment in advance, being without obligation to remove, raise, or lower its wires until such payment has been made. Company shall be given adequate, and in no event less than forty-eight (48) hours, advance notice to arrange for such temporary wire changes.

**Section 10.** Company shall construct, operate, and maintain its transmission and distribution facilities in substantial accordance with Company's own Service Standards and the National Electrical Safety Code ("NESC"). Company shall determine the specific location and the method of construction and types of materials used in building, maintaining, and operating Company's transmission and distribution facilities. City shall require its employees and contractors performing work for the benefit of City to comply with all applicable laws, statutes, codes and standards (including, without limitation, Section 752 of the Texas Health and Safety Code, as the same may be amended or replaced, and the NESC) when working near Company's System and to report as soon as practicable any damage done to Company's System. Company also agrees to require its employees and contractors performing work for the benefit of City to comply with all applicable laws, statutes, codes and standards (including, without limitation, Section 752 of the Texas Health and Safety Code, as the same may be amended or replaced, and the NESC) when working near City's facilities and to report as soon as practicable any damage done to City's facilities. Company shall relocate facilities within Public Rights-of-Way at Company's own expense, exclusive of street lighting and facilities installed for service directly to City, to accommodate Public Works Improvement Projects, including, but not limited to street widening, change of grade, water, sewer, or drainage upgrades, construction or reconstruction

