

ORDINANCE NO. 2351

**AN ORDINANCE AMENDING SECTION 4 OF ORDINANCE NO. 2155 OF THE CITY OF DERBY, KANSAS RELATING TO THE FRANCHISE FEE TO BE PAID BY KANSAS GAS AND ELECTRIC COMPANY, A KANSAS CORPORATION DOING BUSINESS AS WESTAR ENERGY, AN ELECTRIC FRANCHISE TO OPERATE AN ELECTRIC LIGHT, HEAT, AND POWER UTILITY IN THE CITY OF DERBY, KANSAS, AND REPEALING THE ORIGINAL SECTION 4 OF ORDINANCE NO. 2155.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:**

**Section 1.** Section 4 of Ordinance No. 2155 of the City of Derby, Kansas is hereby amended to read as follows:

**“SECTION 4. Franchise Fee.** In consideration for the grant of this franchise and the rights and privileges appertaining thereto, Grantee shall pay a franchise fee as defined and in the manner provided herein, to wit:

- (a) Grantee shall pay the City a sum equal to six percent (6%) of the Grantee's Gross Receipts.
- (b) The sums in subsection (a) above shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.
- (c) Franchise fees shall be calculated and remitted on a monthly basis without invoice or reminder from the City, and shall be remitted within forty-five (45) days after the last day of each calendar month as to which the fee is due and owing. The City may require that such fees be remitted to the City by electronic funds transfer.
- (d) No acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.
- (e) The Grantee will use commercially reasonable efforts to ensure the accuracy of its records and of the determination of the amount of Gross receipts subject to the fee provided for in this Section 4. In the event and to the extent the accounting rendered to the City by the Grantee is found to be incorrect due to Grantee's failure to use commercially reasonable efforts as provided herein, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Grantee, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Grantee agrees that all of its books, records, documents, contracts and agreements as may be reasonably necessary for an effective

compliance review of this Ordinance and Ordinance No. 2155 shall upon reasonable notice and at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting. Notwithstanding the obligation herein, the Grantee shall have the right to require the reasonable protection of proprietary information and to provide redacted documents or require the City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of the Grantee but which do not unreasonably frustrate the purposes of this subsection.

- (f) Grantee shall also convey to the City, not less often than quarterly, a statement showing the basis on which the franchise fee was calculated.
- (g) The franchise fee provided for herein shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than thirty (30) days after the date that the City provides the Grantee with reasonable proof of such annexation, including a description and illustration of the annexed area.
- (h) The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges and fees, except for:
  - (1) The usual general property taxes and special ad valorem property taxes, sales and excise taxes; or
  - (2) Any permit fees and charges for pavement cuts or other permit fees and charges based upon restoring premises to their same condition;
- (i) If federal law or state law is enacted setting forth a maximum allowable level of compensation applicable to the franchise rights hereunder, and if such maximum allowable compensation level is less than the level of compensation required hereunder, then Grantee shall pay compensation to the City in an amount equal to such maximum compensation level for the remainder of the term while such law is applicable; provided, however, that no such adjustment shall be made to the extent that any such law setting such maximum compensation level does not apply to existing franchise compensation provisions.”

## **Section 2. Repeal**

Section 4 of Ordinance No. 2155 as originally enacted is hereby repealed and replaced as provided for herein, effective as of the effective date of this Ordinance.

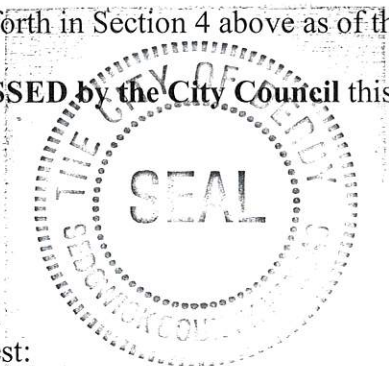
**Section 3.** All other original provisions of Ordinance No. 2155 of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein.

## **Section 4. Effective Date**


This Ordinance shall take effect and be in force from and after the first day of the first month following its passage and approval by the City, acceptance by the Company, and publication in the City's official newspaper as provided by State law. In its letter of acceptance, Company shall

identify the effective date as set forth above and Company shall begin paying the franchise fee as set forth in Section 4 above as of that date.

**PASSED by the City Council** this 10<sup>th</sup> day of April, 2018 and **SIGNED** by the Mayor.

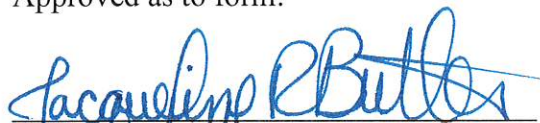


Seal  
Attest:

  
Randy White, Mayor

  
Karen Friend, City Clerk

Approved as to form:

  
Jacqueline R. Butler, City Attorney