

**CITY OF BILOXI  
AGENDA ITEM  
FACT SHEET**

Item No.: 4A

Council Meeting Date: **March 24, 2020**

**ITEM TITLE:** ORDINANCE (1st Reading)

**INTRODUCED BY:** Mayor Andrew "FoFo" Gilich

**CONTACT PERSON:** E. Michael Leonard, CAO

Peter Abide, City Attorney

**SUMMARY EXPLANATION:**

An Ordinance granting a Non-Exclusive Electric Franchise to Mississippi Power Company, its successors and assigns, in the City of Biloxi

Resolution \_\_\_\_\_ Ordinance ✓ Public Hearing \_\_\_\_\_ Routine Agenda \_\_\_\_\_

Exhibits for Review

Contract \_\_\_\_\_ Minutes \_\_\_\_\_ Plans/Maps \_\_\_\_\_ Deed \_\_\_\_\_ Lease \_\_\_\_\_

Other (Specify):

Submittal Authorization: Council President \_\_\_\_\_ Mayor ✓

**STAFF RECOMMENDATION:** Staff recommends approval

**COUNCIL ACTION:** Motion By: \_\_\_\_\_ Second By: \_\_\_\_\_

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

**ACTION TAKEN:**

Ordinance No.

AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC FRANCHISE TO  
MISSISSIPPI POWER COMPANY, ITS SUCCESSORS AND ASSIGNS  
IN THE CITY OF BILOXI, MISSISSIPPI

WHEREAS, Mississippi Power Company has requested the City of Biloxi, Mississippi, to cause a franchise to be issued to it for a period of twenty-five (25) years, which proposed franchise ordinance would provide for the payment to the City of Biloxi, a sum equal to three percent (3%) of Mississippi Power Company's total revenue from retail sales of electric energy, excepting therefrom sales for resale and sales in interchange of energy with others, within the corporate limits of the City of Biloxi, according to the terms and conditions of the proposed franchise ordinance; and

WHEREAS, it is in the best interest of the City of Biloxi that such Non-Exclusive Franchise be granted to Mississippi Power Company, its successors and assigns.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF BILOXI, MISSISSIPPI, THAT:

SECTION 1. In consideration of the benefits that will accrue to the City of Biloxi, Mississippi, and the Inhabitants thereof (the "Municipality"), and of the payment by Mississippi Power Company (the "Grantee") to the Municipality of a sum of money equal to three percent (3%) per year of the total gross revenue of the Grantee from the retail sales of electric energy, excepting therefrom sales for resale and sales in interchange of energy with others, within the corporate limits of the Municipality, payable quarterly on or before thirty (30) days following the close of each calendar quarter during such period as the Grantee operates in said Municipality, but not to exceed twenty-five (25) years from the Effective Date of this Ordinance (as defined in Section 16), Municipality does hereby grant

to and vest in the Grantee, its successors and assigns as franchised activities, the right, authority, easement, privilege, and franchise to construct, erect, suspend, install, renew, repair, maintain, operate, and conduct in the Municipality as it now exists or may hereafter be extended, equipment, facilities, lines, including communication lines, plant or plants, and system or systems for the generation, transmission, or distribution of electric energy ("Primary Use"), including, without limitation, broadband services, internet access and services, telecommunications services, and fiber optic communication services that are for or in support of the Primary Use (collectively, "Franchised Activities"). The use of Authorized Facilities (as defined below) for any other purposes whatsoever, including without limitation, broadband services, internet access and services, telecommunications services, and fiber optic communication services that are not for or in support of the Primary Use and/or for or to any person or entity other than the Grantee, regardless of whether for compensation ("Ancillary Use") shall be excluded from the franchise granted by this Ordinance and the calculation and payment of such fees shall be governed solely by separate franchises, agreements, or ordinances of the Municipality applicable to such Ancillary Use, if any. It shall be the obligation of the Grantee and the person or entity providing such services associated with Ancillary Use to or for any person or entity other than the Grantee, regardless of whether for compensation, to notify the Municipality of any such Ancillary Use and to obtain a franchise, agreement, or ordinance in connection with such Ancillary Use. Notwithstanding anything contained herein to the contrary, the use of any facilities constructed, maintained, and operated for or in support of the Primary Use shall not be governed by any other franchise agreement or ordinance.

SECTION 2. To facilitate the Franchised Activities, Municipality does hereby give and grant to, and vest in, Grantee, its successors and assigns, the further right, authority, easement, privilege, and franchise to construct, erect, suspend, install, renew, repair, maintain, operate and conduct in the Municipality for such Franchised Activities a system(s) of poles, towers, conduits, cables, fiber, wires, conductors, transforming stations, plants, fittings, and all appliances or appurtenances needed to pursue, promote, and carry out to the Primary Use (such system and its components collectively referred to herein as, "Authorized Facilities") in, over, under, along, upon, and across all streets, avenues, alleys, ways, bridges, and public places in the Municipality as they now exist or may hereafter be laid out or extended, together with the further right, privilege, and franchise to construct, erect, suspend, install, renew, repair, maintain, and operate such Authorized Facilities within, into, through, over, under, across, and beyond the Municipality and furnishing, supplying, and distributing to the Municipality and to the inhabitants, corporations and other entities (public or private) (collectively with the Municipality, "Inhabitants"), both within and beyond the limits thereof, electric energy for lighting, heating, power, security and surveillance, and all other purposes for which electric energy and related facilities may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of the Municipality. Municipality further agrees, for itself and its Inhabitants, in consideration for the Supplemental Fees paid by the Grantee, that it will not compete in any manner with Grantee for the generation, including self-generation or self-supply, transmission, distribution, or sale of electric energy, including but not limited to any attempt, directly or indirectly, to acquire such a system, as such terms are defined in Title 21, Chapter 27, Section 11 of the *Mississippi Code of 1972, as amended*. Notwithstanding

anything contained herein to the contrary, Grantee's Franchised Activities shall not include any work or project that does not support the Primary Use; should Grantee desire to construct, maintain, or operate any equipment or facilities that are not Authorized Facilities to support the Primary Use, Grantee agrees to obtain a separate franchise agreement under any applicable ordinance governing franchises for such facilities and such contemplated activities, and to comply with any governing or applicable ordinance with respect to the construction, location, and use of such facilities, infrastructure, and activities, including the payment of any fees by Grantee to Municipality associated with such franchise.

SECTION 3. In further consideration for the fees paid by Grantee to Municipality hereunder, the rights provided to Grantee herein shall specifically include the right for Grantee to install, at its election and costs, electric vehicle charging stations ("EV Chargers") in locations designated or approved in advance by the Municipality in writing and permitted by law to accommodate such uses. All EV Chargers installed in such designated or approved locations shall, unless set out otherwise in a separate agreement, constitute Authorized Facilities and shall be maintained by Grantee in a reasonably good condition and repair. All such usage shall be metered and billed by Grantee to users of the EV Chargers at rates set by Grantee, unless such rates are otherwise subject to the jurisdiction of the Mississippi Public Service Commission, its successor, or any other authority with jurisdiction over Grantee's rates for electric energy sales ("Regulatory Authority"). In addition, Municipality shall have the right, at its election and cost, to require Grantee to install EV Chargers at locations of Municipality's choosing within the Municipality, the usage of which shall be metered and billed to the Municipality.

SECTION 4. The Authorized Facilities shall be so installed or constructed as not unreasonably to interfere with the proper use of the streets, avenues, alleys, ways, bridges, and public places in the Municipality and shall be maintained all in a reasonably good condition and repair.

SECTION 5. Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, or public places of the Municipality for the purpose of installing, maintaining, operating, or repairing any Authorized Facilities, the work shall be completed within a reasonable time; and the Grantee shall, upon the completion of such work, restore such portion of the streets, avenues, alleys, ways, bridges, or other public places to as good a condition as it was before the opening or alteration was so made.

SECTION 6. The Grantee shall indemnify and hold the Municipality harmless from any and all liability or damages resulting from the negligence of the Grantee in the construction, maintenance, or operation of its Authorized Facilities.

SECTION 7. The Grantee may, from time to time, declare, make, and enforce reasonable rules and regulations as conditions for the sale and distribution by it of electric energy to any person, firm, or corporation, not, however, in conflict with or repugnant to the jurisdiction of the Mississippi Public Service Commission under the provisions of Title 77, Chapter 3, *Mississippi Code of 1972, as amended*.

SECTION 8. In the event the supply of electric energy shall be interrupted or fail by reason of accident or otherwise, beyond the Control of the Grantee, the Grantee shall restore the service within a reasonable time and such interruption shall not constitute a

breach of this franchise, nor shall the Grantee be liable for damage by reason of such interruption or failure.

SECTION 9. Wherever in this Ordinance either the Municipality or the Grantee is named or referred to, it shall be deemed to include the respective successors or assigns of either, and all rights, privileges, and obligations herein conferred shall bind and inure to the benefit of such successors or assigns of the Municipality or of the Grantee. Further, if during the term of this franchise, the boundaries of the Municipality are expanded, the Municipality will promptly notify Grantee in writing of any geographic areas annexed by the Municipality ("Annexation Notice"). Any such Annexation Notice shall be sent to Grantee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as may be reasonably required to ascertain whether Grantee serves any customers in the annexed area. To the extent there are such customers of Grantee situated in the annexed area, then the revenues provided for in Section 1 of this Ordinance shall be calculated to include those customers effective on the first day of Grantee's billing cycle immediately following Grantee's receipt of the Annexation Notice. Failure by the Municipality to advise Grantee in writing through the proper Annexation Notice of any geographic areas which are annexed by the Municipality shall relieve Grantee from any obligation to remit any franchise fees to Municipality based upon gross revenues derived from customers within the annexed area until Municipality delivers an Annexation Notice in accordance with the terms set forth herein.

SECTION 10. This franchise is in addition to and supplemental to any and all such rights as the Grantee may have by virtue of the provisions of Title 77, Chapter 3, of the

*Mississippi Code of 1972, as amended*, and any other section of the *Mississippi Code of 1972, as amended*, as the same may be legally binding or applicable to the Municipality or this franchise Ordinance, and its acceptance and exercise by the Grantee shall never be construed as a waiver, abandonment, nor limitation upon the rights now vested in or being exercised by the Grantee under any statute or law of the State of Mississippi. Nor shall the granting of this franchise be construed or operate to abridge, impair, or deny the validly held rights of any other distributor of electric energy within the Municipality, or portion thereof, by virtue either of a franchise from the Municipality or a certificate of public convenience and necessity issued pursuant to Title 77, Chapter 3, *Mississippi Code of 1972, as amended*.

SECTION 11. The rights hereby granted shall become effective upon the passage of this Ordinance in accordance with Section 16 hereof and continue for a period of twenty-five (25) years from the Effective Date, unless terminated sooner as provided for in Section 15.

SECTION 12. If any clause, provision or section of this Ordinance is illegal, or is not embraced within the title hereof, or is not related to the subject expressed in the title, the remaining provisions hereof shall not be thereby affected but shall have full force and operation.

SECTION 13. The Grantee shall pay the Municipality the cost of publishing this Ordinance according to law and also the cost of holding a special election for the approval or disapproval by the qualified electors of the Municipality of this Ordinance.



SECTION 14. This franchise is in lieu of and supersedes a franchise previously granted to Grantee by the Municipality, which upon the Effective Date of this Ordinance shall, by mutual consent of the parties hereto, no longer be in force and effect.

SECTION 15. Grantee and Municipality mutually acknowledge that in the event the Regulatory Authority, or any court of law, tribunal, regulatory agency or other body with authority to alter Grantee's rates for electric service, rejects, limits, or otherwise modifies Grantee's payments provided for under this Ordinance, or otherwise, directly or indirectly, disallows Grantee's recovery through rates of all or any portion of this Ordinance's prescribed fees, Grantee's fees provided for in Section 1 shall, without amendment to this Ordinance, be modified to the amount allowed for recovery by the Regulatory Authority, but the Franchised Activities granted by this Ordinance shall remain unchanged in any manner whatsoever. Further, Grantee reserves the right to collect the franchise fees hereunder from the Inhabitants of the Municipality in any manner satisfactory to Grantee, provided that Grantee provides advance written notice of the same to the Municipality. In the event of such modification, either party may terminate this Ordinance upon giving the other party thirty (30) days written notice and upon such termination, the Grantee's and Municipality's rights and obligations under this Ordinance shall cease. Notwithstanding the termination of this Ordinance by either party pursuant to this Section 15, the provision of any services contemplated as an Ancillary Use and any fees applicable to such Ancillary Use shall be governed by the Municipality's other ordinances, franchises, and/or agreements applicable to such use.

SECTION 16. This Ordinance shall not become effective until it is duly passed by the Governing Body, published as required by law, and approved by a majority vote of

qualified electors of the Municipality voting thereon at a special election duly called and held as required by law ("Effective Date").