

## ELECTRIC ORDINANCE \_\_\_\_\_

### AN ORDINANCE AUTHORIZING COMMONWEALTH EDISON COMPANY AND ITS SUCCESSORS AND ASSIGNS TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC TRANSMISSION AND POWER SYSTEM ON AND ACROSS PROPERTY OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, as follows:

**SECTION 1.** That the right, permission and authority be, and the same are hereby, granted to Commonwealth Edison Company, an Illinois Corporation and its successors and assigns (hereinafter referred to as the “Grantee”) to construct, operate and maintain on and across property of the City of Rochelle (hereinafter referred to as the “Municipality”) in the County of Ogle, State of Illinois, for a “Term” of fifty (50) years commencing on the “Closing Date” (as defined in the Asset Purchase Agreement by and between the Municipality and the Grantee dated as of April 9, 2018, as amended (“Asset Purchase Agreement”)), a system for the transmission and wholesale sale of electricity including, without limitation, interconnections and to construct, operate and maintain in, upon, along, over, across, above and under each and all of the streets, alleys, avenues and other public places in the Municipality all such structures, poles, wires, conduits and other apparatus and equipment as may be necessary or convenient for the operation of such system (the foregoing right, permission and authority granted pursuant to this Section 1 being hereinafter referred to as the “Franchise”), subject to the conditions and regulations hereinafter set forth.

**SECTION 2.** All structures, poles and wires erected hereunder shall be placed in alleys whenever practicable so to do and shall be so placed, whether on streets, alleys, avenues or other public places, as not to interfere unnecessarily with travel on such streets, alleys, avenues or other public places and shall be erected under the supervision of the Rochelle Municipal Utility or such other agent as the City Council of the Municipality may from time to time designate. All structures and poles erected under this ordinance shall be not less than thirty (30) feet in height and shall be so located as not to injure unnecessarily any drains, sewers, catch basins, water pipes, pavements, or other public improvements, but if any drain sewer, catch basin, water pipe, pavement or other like public improvement is injured by such location, the Grantee shall forthwith repair the damage caused by such injury to the satisfaction of the Municipality’s committee on streets and alleys or such other duly authorized agent as the Municipality may designate, and if the Grantee defaults on its obligation to repair any such damage, the Municipality may repair such damage and charge the cost of labor and material therefor to, and collect the same from, the Grantee, provided that all structures, poles and wires installed as of the Closing Date and acquired by the Grantee pursuant to the Asset Purchase Agreement shall be deemed to be in compliance with this Section 2.

The Rochelle Municipal Utility or such other duly authorized agent of the Municipality, is hereby authorized and directed to call upon the Grantee to, and the Grantee may of its own accord,

cause the trees growing upon or overhanging all of the streets, alleys, avenues and other public places in the Municipality upon which the Grantee's electric light or power lines are erected hereunder to be trimmed from time to time in such manner that there shall be a proper clearance between the nearest wires on said lines and any portion of such trees. Such trees shall be so trimmed that none of the branches, twigs, or leaves thereon shall come in contact or interfere with the wires or other equipment upon such lines and shall be trimmed by and at the expense of the Grantee under the supervision of Rochelle Municipal Utility or such other duly authorized agent as the Municipality may designate from time to time.

All abandoned structures and poles shall be removed as soon as the use thereof is discontinued. To the extent practicable, all structures and poles shall be set in straight lines, and all vertical clearances of wires, conductors and cables shall be in compliance with the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc.

The Grantee shall be subject to all reasonable regulations that may now or hereafter be prescribed by general ordinance of the Municipality with respect to the use of public streets, alleys, avenues and other public places of the Municipality.

ComEd will conduct annual vegetation inspections and will generally trim vegetation on a five-year cycle. ComEd's vegetation management program complies with North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) standards which require specific vegetation clearance distances between vegetation and conductors.

Notwithstanding anything herein to the contrary, and without otherwise waiving the Municipality's jurisdiction as it pertains to the matters herein, this Ordinance is not intended to and shall not limit or impair the authority of the Illinois Commerce Commission, including the authority to issue Certificates of Public Convenience and Necessity under Article VIII of the Illinois Public Utilities Act (220 ILCS Act 5, Article VIII), or to limit or impair the right or obligation of public utilities to construct, operate and maintain those facilities described in any such Certificate. Notwithstanding anything herein to the contrary, and without otherwise waiving the Municipality's jurisdiction as it pertains to the matters herein, this Ordinance is not intended to and shall not limit or impair the authority of FERC, NERC, or transmission operating, planning or reliability organizations, including, without limitation, PJM Interconnection, LLC, operating under the authority of FERC or NERC, or to limit or impair the right or obligation of utilities to operate in accordance with orders, rules and standards of such organizations and with tariffs on file with FERC.

**SECTION 3.** The Grantee shall become responsible for, and shall indemnify and forever save harmless the Municipality from, any and all liabilities, judgments, damages, decrees and other costs and expenses, including reasonable attorneys' fees, that the Municipality may legally suffer or incur, or which may be legally obtained against the Municipality, for or by reason of the use and occupation by the Grantee of any street, alley, avenue, public right of way or other public place in the Municipality pursuant to the terms of this ordinance or legally resulting from the exercise by the Grantee of any of the privileges herein granted; except that the indemnity provided for in

this Section 3 shall not apply to any liabilities, judgments, damages, decrees or other costs or expenses (a) determined by a court of competent jurisdiction to have resulted from the negligence or intentional acts or omissions of the Municipality or any of its agents or employees or (b) arising out of events or circumstances that shall have occurred or existed prior to the Closing Date.

**SECTION 4.** The Grantee shall accept the Franchise, subject to all of the terms and conditions of this ordinance, by its filing of a duly executed letter agreement in the form attached hereto as Exhibit A (“Letter Agreement”) with the City Clerk of the Municipality within thirty (30) days after the passage of this ordinance by the City Council of the Municipality. The failure of the Grantee to so accept the Franchise within such thirty-day period shall be deemed a rejection of the Franchise by the Grantee, and the rights and privileges herein granted shall thereupon terminate and cease to be of any force or effect, unless prior to the expiration of such thirty-day period, such period shall be extended by the Municipality by ordinance of its City Council duly passed for that purpose.

**SECTION 5.** All provisions of this ordinance that are obligatory upon, or which inure to the benefit of, the Grantee shall also be obligatory upon, and shall inure to the benefit of, any and all successors and assigns of the Grantee, and the word “Grantee” whenever appearing in this ordinance shall include and be taken to mean not only the Grantee but also each and all of such successors and assigns.

**SECTION 6.** Pursuant to the Letter Agreement, the Grantee shall agree to pay to the Municipality an annual Franchise fee in the amount of thirty thousand and 00/100 dollars (\$30,000.00) for each period of twelve (12) consecutive months that begins on the Closing Date and each anniversary of the Closing Date thereafter during the Term.

**SECTION 7.** This ordinance and the Franchise hereby granted and any acceptance by the Grantee of the Franchise in accordance with Section 4 hereof are subject to the “Closing” (as defined in the Asset Purchase Agreement) of the transactions contemplated by the Asset Purchase Agreement and shall not become effective unless and until the Closing shall have occurred and, upon the occurrence of the Closing, shall be and remain in full force and effect thereafter during the Term and shall supersede and be in lieu of any and all other prior grants of any right, permission or authority by the Municipality to the Grantee or any predecessor-in-interest of the Grantee to construct, operate and maintain any system for the transmission and wholesale sale of electricity for lighting, heating, power or other purposes within the Municipality.

PASSED BY THE CITY COUNCIL, CITY OF ROCHELLE, ILLINOIS, THIS 9th DAY OF December, 2019.

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City Clerk

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CITY MAYOR

(SEAL)

ATTEST:

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I, \_\_\_\_\_, Clerk of said City of Rochelle, Ogle County, Illinois do hereby certify that the above and foregoing Franchise Ordinance passed by the Mayor and City Council of the City of Rochelle on the date aforesaid.

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City Clerk