

EXCERPTS FROM THE MINUTES  
OF A MEETING OF THE TOWN COUNCIL  
OF THE TOWN OF FOUNTAIN LAKE  
ARKANSAS HELD ON MARCH 10, 2008

Chambers of the Town Council  
FOUNTAIN LAKE, Arkansas  
MARCH 10 2008 7:00 P.M.

The Town Council of the Town of FOUNTAIN LAKE, Arkansas  
met in regular session on MARCH 10, 2008, at 7:00 p.m., due  
notice of said meeting having previously been given to each of the members of  
the council. Mayor TIM STOCKDALE presided, and MARGARET BUSHONG  
Town Recorder (Clerk), and the following Council Members were present:

FRANK PFENGER  
DONNA BELOTE;  
CARL SHEETS;

Council Members JANE TUMA AND CLYDE VAUGHAN were  
absent.

There being a quorum present and it being so announced, the following  
proceedings were had:

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There was then presented Ordinance No. 2008-01 entitled:

AN ORDINANCE GRANTING TO ENTERGY ARKANSAS, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF ELECTRIC POWER AND ENERGY TO THE TOWN OF FOUNTAIN LAKE, ARKANSAS, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE TOWN IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES; which ordinance was read the first time. Upon question by Mayor STOCKDALE, the Town Recorder (Clerk) stated that the ordinance as read had been on file in the office of the Town Clerk for the required seven days for filing of franchise ordinances. Council member PEENENGER then moved that the rules be suspended and the ordinance as read be placed on second reading. This motion was seconded by Council member SHEETS, and adopted by the following roll call vote: Ayes 3 Council Members PEENENGER, BELOTE AND SHEETS

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- total 3 ; Noes - none; Absent - Council Members VAUGHN AND

TUMA - total 2 . Said

ordinance was then read the second time. Motion was made by Council Member

SHEETS that the rules again be suspended and the ordinance

be placed on third and final reading. This motion was seconded by Council

Member BELOTE, and adopted by the following roll call vote:

Ayes - Council Members BELOTE, SHEETS AND PFERDNER

- total 3 ; Noes - none; Absent - Council Members VAUGHN AND

TUMA

- total 2 . The ordinance was then read the third and last time, and the Aye

and No vote taken upon the question, Shall the Ordinance Pass, the result being

as follows: Ayes - Council Members BELOTE, SHEETS AND

PFERDNER

total 3 ; Noes - none; Absent - Council Members VAUGHN AND

TUMA

total 2 . Whereupon, said ordinance was declared passed.

The emergency section, being Section 14 of Ordinance No. 2008-01,  
entitled: "AN ORDINANCE GRANTING TO THE ENTERGY ARKANSAS, INC.,  
ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE  
AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER  
AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM  
FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF  
ELECTRIC POWER AND ENERGY TO THE TOWN OF FOUNTAIN LAKE  
ARKANSAS AND THE INHABITANTS AND ALL OTHER CONSUMERS  
THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER  
PUBLIC GROUNDS OF THE TOWN IN CONNECTION THEREWITH; FIXING  
THE TERMS THEREOF, AND FOR OTHER PURPOSES"; was read, and was

adopted by the following roll call vote: Ayes – Council Members BELOTE,  
SHEETS AND PFERENCER

total 3; Noes – none; Absent – Council Members VAUGHN AND  
TUMA

total 2.

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**J. E. SANDERS**  
**Attorney at Law**

520 Ouachita, Hot Springs, AR 71901  
501/623-5538 FAX 501/623-1408

August 14, 2008

Tim Stockdale, Mayor  
Town Council  
Town of Fountain Lake  
7148 Park Avenue  
Fountain Lake, AR 71901

RE: PROPOSED ORDINANCE NO. 2008-01

Dear Council:

I have been requested to provide a letter opinion regarding proposed Ordinance No. 2008-01 granting certain rights to Entergy Arkansas, Inc., its successors and assigns, regarding the erection, maintenance and operation of a distribution and transmission electrical system for the Town of Fountain Lake and the agreed use of streets, alleys, bridges and other public grounds to effectuate the transmission of those services. The following is a brief letter opinion pursuant to the request.

The following comments relate to sections which are numbered for ease of reference:

Section 1: Entergy Arkansas, Inc. will have an exclusive right, presently and in the future, for expansion of its services as needed by the Town and as may be required by the Public Utility Commission or other governmental entities. In exercising that right, Entergy will be able to access in, on and under all streets, alleys and public grounds to accomplish its purposes in establishing transmission services.

Section 2: It will be the duty of the Town of Fountain Lake to protect the exclusivity of Entergy and this duty may require affirmative acts on the part of the Town of Fountain Lake in the future in the event an alternate electrical service provider attempts to persuade the Town to use its services.

Section 3: Entergy will be under a duty to assure its exercise of placement of utilities will not unreasonably obstruct public use and travel and that any

excavation caused thereby or other damages will be repaired at Entergy's own expense.

Section 4: Entergy will be allowed to trim, cut and otherwise maintain trees, shrubbery or growth, including the removal of trees, that are in or on public ways and to furthermore enter upon private property to trim and remove growth which encroaches on public ways.

Section 5: This is self-explanatory; no comments.

Section 6: This is self-explanatory; no comments.

Section 7: Entergy is bound to exercise reasonable and proper precaution to avoid damage and injury to persons or property in the exercise of its operations, service and maintenance and to hold harmless the Town in the event of any damage caused by its activities.

Section 8: Entergy covenants to keep its facilities in reasonable state of repair and in the process of upkeep of its equipment will install equipment customarily used in cities or towns of similar size as Fountain Lake.

Section 9: I am concerned about this section and, because I have no background or information provided the Town for the basis for which the Town elected not to collect a franchise payment from residential and commercial customers, I can only comment by calling to your attention that there may be a right to which the Town was entitled and it apparently has chosen not to exercise it. It is assumed the Town received some type of counsel or advice or took under advisement the information it received regarding the matter and determined it to be in the best interests of the Town not to elect to collect such a franchise fee from its patrons. Whether or not the Town is estopped in the future is unknown and problematic. It is also noted that the Town of Fountain Lake discharged Entergy from any further obligation to make payments or license fees, other than what it may already be collecting in connection with existent taxing and assessment procedures.

Section 10: The Town of Fountain Lake will be responsible for payment of all street lighting and other electrical services provided to the Town by Entergy in accordance with rates established and approved by the Arkansas Public Service Commission.

Section 11: This establishes in writing that the Ordinance shall be in effect a valid written contract between the parties.

Section 12: This is a standard provision in contracts indicating that if any one paragraph, section, clause or other provision is deemed to be invalid, that it shall not invalidate the entire agreement but only relate to the section so invalidated.

Section 13: This is self-explanatory; no comments.

Section 14: Because the unique circumstances couched in terms of "urgent need" to state terms and provisions of the agreement and there being declared an emergency existing, the Ordinance has been established for the purpose of preservation and advancement of the public peace, health and safety, and shall take full force and effect from and after the date of its approval.

Very truly yours,



J. E. SANDERS

JES/dlp

ORDINANCE NO. 2008-01

AN ORDINANCE GRANTING TO ENTERGY ARKANSAS, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF ELECTRIC POWER AND ENERGY TO THE TOWN OF FOUNTAIN LAKE, ARKANSAS, WITHIN THE UTILITY'S ALLOCATED SERVICE TERRITORY, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE TOWN IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES.

WHEREAS, the Town must have an adequate and dependable supply of electric power and energy to perform its governmental functions and to promote the peace, health and safety of its inhabitants; and

WHEREAS, electricity has become a household necessity, and an adequate and dependable supply of electric power and energy is essential for carrying on the business and industrial activity of this community; and

WHEREAS, it is in the public interest that there be no duplication of electric facilities on the streets; and

WHEREAS, Entergy Arkansas, Inc., by the acceptance of the rights and privileges granted hereunder, is willing to, and does, obligate itself, its successors and assigns, to meet the reasonable requirements of this Town and its inhabitants for electric power and energy within utility's allocated service territory;



NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FOUNTAIN LAKE, ARKANSAS, THAT:

SECTION 1. The Town of Fountain Lake, Arkansas (hereinafter called Town or Grantor) hereby grants to Entergy Arkansas, Inc., its successors and assigns (hereinafter called Entergy or Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the Town of Fountain Lake, Arkansas, within utility's allocated service territory, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities).

SECTION 2. Grantee shall, and does by acceptance hereof, agree to provide to the Town and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct

its facilities, as defined above, required to serve customers, in all areas and zones of the Town, consents to the construction of such facilities as defined in Section 1 in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to Grantee set forth in and subject to Section 1 from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy.

SECTION 3. All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

SECTION 4. The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and, further, Grantee is hereby given the right, authority and permission to trim, cut

and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities.

SECTION 5. The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this Ordinance, and thereafter, until terminated in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereafter amended.

SECTION 6. The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof.

SECTION 7. In the construction, operation and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

SECTION 8. The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and

practice in cities of similar size in this State during the time this franchise shall remain in force.

SECTION 9.

The Town has elected not to collect a franchise payment from Entergy's residential and commercial customers located within the corporate limits of the Town and no payment is due the Town. It is further understood by Grantor and Grantee that Grantee, its successors and assigns is discharged of any further obligation to make payments of all license fees, special millage taxes, and the general ad valorem taxes (other than automobile license fees, special millage taxes and general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law.

SECTION 10. Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of debiting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

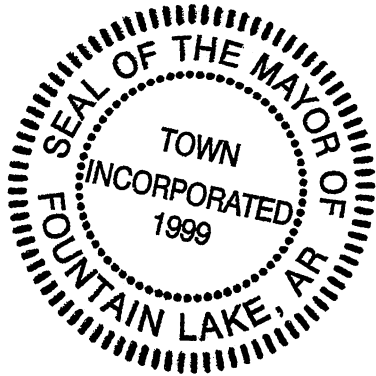
SECTION 11. Upon written acceptance by Grantee, this Ordinance shall constitute a contract between Grantor and the Grantee, and its successors and assigns.

SECTION 12. If any provision, clause, word, section or grant of this Ordinance, or the application thereof to any person or circumstance, be held invalid, such invalidity shall not affect any other provision, clause, word, section or grant of this Ordinance which can be given effect without the invalid provision or application, and to this end, said provisions, clauses, words, sections and grants are hereby declared to be severable.

SECTION 13. All ordinances and parts or ordinances in conflict herewith are hereby repealed.

SECTION 14. It had been found, and is hereby declared by the Town Council of the Town of Fountain Lake that there is an urgent need to state terms and provisions of the franchise under which electric service is provided to the Town and other consumers therein, to agree upon adequate franchise fee to be paid by the utility furnishing such service to the Town, if any, and to fix terms and conditions for the use of Town streets, alleys and other public grounds for electric facilities; that it is in the public interest, convenience and necessity that there be no unnecessary duplication of such facilities; and that enactment of this Ordinance will provide these benefits to the Town and its citizens. Therefore, an emergency is declared to exist, and this Ordinance being necessary for the preservation and advancement of the public peace, health and safety, shall take effect and be in full force from and after the date of its approval.

PASSED this 10 day of March, 2008



SIGNED:

[Signature]

Mayor, Tim Stockdale

ATTEST:

[Signature]  
Clerk, Recorder/Treasurer

APPROVED AS TO FORM:

[Signature]

Attorney, Hot Springs, Ark

Entergy Arkansas, Inc., a corporation, hereby accepts the above franchise subject to the terms and conditions therein this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Entergy Arkansas, Inc.

By:

\_\_\_\_\_  
Vice President

CERTIFICATE

STATE OF ARKANSAS )  
COUNTY OF Garland ) ss  
TOWN OF Fountain Lake

I, MARGARET BUSHORGE, Town Recorder (Clerk) within and for the Town aforesaid, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2008-01 of the Ordinances of the Town of Fountain Lake, Arkansas, entitled:

"AN ORDINANCE GRANTING TO THE ENTERGY ARKANSAS, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF ELECTRIC POWER AND ENERGY TO THE TOWN OF Fountain Lake, ARKANSAS AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE TOWN IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES";

passed by the Town Council of said Town on March 10, 2008 together with a true and correct copy of excerpts from the minutes of a meeting of the said Town Council held on said date, as same pertain to the passage thereof, now of record in my office.

EXCERPTS FROM THE MINUTES  
OF A MEETING OF THE TOWN COUNCIL  
OF THE TOWN OF FOUNTAIN LAKE  
ARKANSAS HELD ON MARCH 10, 2008

Chambers of the Town Council  
FOUNTAIN LAKE, Arkansas  
MARCH 10, 2008 7:00 P.M.

The Town Council of the Town of FOUNTAIN LAKE, Arkansas  
met in regular session on MARCH 10, 2008, at 7:00 p.m., due  
notice of said meeting having previously been given to each of the members of  
the council. Mayor TIM STOCKDALE presided, and MARGARET BUSHONG  
Town Recorder (Clerk), and the following Council Members were present:

FRANK PFENENGER  
DONNA BELOTE  
CARL SHEETS

Council Members JANE TUMA AND CLYDE VAUGHAN were  
absent.

There being a quorum present and it being so announced, the following  
proceedings were had:

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There was then presented Ordinance No. \_\_\_\_\_ entitled:



AN ORDINANCE GRANTING TO ENTERGY ARKANSAS, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF ELECTRIC POWER AND ENERGY TO THE TOWN OF FOUNTAIN LAKE, ARKANSAS, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE TOWN IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES; which ordinance was read the first time. Upon question by Mayor STOCKDALE, the Town Recorder (Clerk) stated that the ordinance as read had been on file in the office of the Town Clerk for the required seven days for filing of franchise ordinances. Council member PEENENGER then moved that the rules be suspended and the ordinance as read be placed on second reading. This motion was seconded by Council member SHEETS, and adopted by the following roll call vote: Ayes 3 Council Members PEENENGER, BELONG AND SHEETS

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MARCH 10, 2008

- total 3; Noes – none; Absent – Council Members VAUGHN AND  
TUMA - total 2. Said

ordinance was then read the second time. Motion was made by Council Member  
SHEETS that the rules again be suspended and the ordinance  
be placed on third and final reading. This motion was seconded by Council  
Member BELOTE, and adopted by the following roll call vote:

Ayes – Council Members BELOTE, SHEETS AND PENDERGEN

- total 3; Noes – none; Absent – Council Members VAUGHN AND  
TUMA

- total 2. The ordinance was then read the third and last time, and the Aye  
and No vote taken upon the question, Shall the Ordinance Pass, the result being  
as follows: Ayes – Council Members BELOTE, SHEETS AND  
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total 3; Noes – none; Absent – Council Members VAUGHN AND  
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total 2. Whereupon, said ordinance was declared passed.

MARCH 10, 20

The emergency section, being Section 14 of Ordinance No. 2008-01,  
entitled: "AN ORDINANCE GRANTING TO THE ENTERGY ARKANSAS, INC.,  
ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE  
AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER  
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THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER  
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THE TERMS THEREOF, AND FOR OTHER PURPOSES"; was read, and was

adopted by the following roll call vote: Ayes – Council Members BELOTE,  
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total 3; Noes – none; Absent – Council Members VAUGHN AND  
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