

105-0-93

AN ORDINANCE

Amending Ordinance No. 13-0-57  
Granting Authority to Commonwealth Edison Company  
to Construct, Operate and Maintain an Electric  
Light and Power System in the City of Evanston

WHEREAS, the City Council of the City of Evanston did on March 4, 1957, adopt an Ordinance No. 13-0-57 entitled "Electric Ordinance", an ordinance authorizing Commonwealth Edison Company (PUBLIC SERVICE COMPANY DIVISION), its successors and assigns to construct, operate, and maintain an electric light and power system in and through the city of Evanston, Cook County, Illinois; and

WHEREAS, said ordinance granted to the Commonwealth Edison Company, then known as the Public Service Company Division, the right, permission and authority to construct, operate and maintain in and through the City of Evanston for a term of thirty-five (35) years a system for the production, transmission, distribution and sale of electricity for lighting, heating, power and other purposes within and outside the corporate limits of the municipality and to construct, operate and maintain all such poles, wires, conduits, manholes, vaults and other apparatus and equipment as may be necessary or convenient for such a system in, upon, along, over, across, above and under each and all of the streets, alleys, avenues and

other public places in the municipality subject to the conditions and regulations hereinafter set forth; and

WHEREAS, the successor to Commonwealth Edison Company (Public Service Company Division) is Commonwealth Edison Company; and

WHEREAS, it is the desire of Commonwealth Edison Company and the City of Evanston to extend the terms of said Ordinance No. 13-O-57 for a period of seven (7) years to commence from March 5, 1992 to March 5, 1999 and to provide that all the terms of said Ordinance No. 13-O-57 shall remain in full force and effect until March 5, 1999; and

WHEREAS, it is the desire of Commonwealth Edison Company and the City of Evanston that from and after March 5, 1999, the terms of this authorization shall be those set forth in Section 3 of this ordinance unless the City of Evanston by its City Council shall determine to terminate said authorization. Such termination shall be accomplished by an ordinance adopted by the City Council of the City of Evanston within one hundred eighty (180) days prior to March 5, 1999.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Ordinance No. 13-O-57 adopted by the City Council of the City of Evanston on the 4th day of March, 1957, be amended by striking the words "thirty-five (35) in Section 1 of said ordinance and inserting in lieu thereof, the words "forty-two (42)".

SECTION 2: The duration of Ordinance No. 13-0-57 be and it is hereby extended in accordance with Section 1 of this Ordinance, and all its terms shall remain in full force and effect for that period.

SECTION 3: Unless terminated by the City Council by ordinance within one hundred eighty days (180) prior to March 5, 1999, the terms of the authority herein granted shall be as hereinafter set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law and the acceptance of this ordinance by Commonwealth Edison Company. This ordinance shall be retroactive to March 5, 1992.

Introduced: September 13, 1993

Adopted: September 27, 1993

Approved: September 29, 1993

Lorraine H. Norton  
Mayor

ATTEST:

Lester Davis  
City Clerk

Approved as to form:

[Signature]  
Corporation Counsel



EXHIBIT A

CITY OF EVANSTON  
COOK COUNTY, ILLINOIS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING COMMONWEALTH EDISON COMPANY  
TO USE THE PUBLIC WAYS AND OTHER PUBLIC PROPERTY  
IN CONJUNCTION WITH ITS CONSTRUCTION, OPERATION AND  
MAINTENANCE OF AN ELECTRIC SYSTEM IN AND THROUGH THE  
CITY OF EVANSTON, COOK COUNTY, ILLINOIS

ADOPTED BY THE CITY COUNCIL  
OF THE  
CITY OF EVANSTON

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_

Published in Pamphlet Form  
by Authority of the City Council  
of the City of Evanston,  
Cook County, Illinois,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING COMMONWEALTH EDISON COMPANY  
TO USE THE PUBLIC WAYS AND OTHER PUBLIC PROPERTY  
IN CONJUNCTION WITH ITS CONSTRUCTION, OPERATION AND  
MAINTENANCE OF AN ELECTRIC SYSTEM IN AND THROUGH THE  
CITY OF EVANSTON, COOK COUNTY, ILLINOIS

Be it ordained by the City Council of the City of Evanston,  
County of Cook, Illinois, as follows:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following terms, phrases and words and their derivations shall have the meanings given in this Section, unless the context or use clearly indicates another or different meaning is intended.

- 1.1. "City" is the City of Evanston.
- 1.2 "Licensee" is the Commonwealth Edison Company.
- 1.3 "Clerk" is the Clerk of the City of Evanston.
- 1.4 "Competent Authority" means and includes any governmental body or forum vested by law with authority to do the act or make the order, rule or regulation involved.
- 1.5 "Corporate Authorities" is the Mayor and City Council of the City of Evanston.
- 1.6 "Edison Representative" is the person or persons designated by the Licensee responsible for the day-to-day performance of the Licensee's duties under this Ordinance and who shall be available and accessible to the City for that purpose during regular office hours.
- 1.7 "Edison Emergency Representative" is the person or

persons designated by the Licensee responsible for the performance of the Licensee's duties under this Ordinance during emergencies and at all times other than the Licensee's regular office hours and who shall be available and accessible to the City for that purpose during emergencies and at all times other than the Licensee's regular office hours. The Edison Representative may also be designated as the Edison Emergency Representative.

1.8 "Electric System" shall mean a system for the production, transmission, distribution and sale of electricity for lighting, heating, power and other purposes within and outside the corporate limits of the City.

1.9 "Energy Efficiency/DSM" means applications of technologies and techniques for increasing the efficiency of electric energy use or managing demand for electric energy. Such applications may be designed to achieve greater end use benefits from electric energy consumed, reductions in electric energy consumption, shifts of electric energy demand to times when it can be met more economically, or other initiatives designed to manage or reduce demand for electric energy.

1.10 "FERC" means and refers to the Federal Energy Regulatory Commission or other authority succeeding to the regulatory powers of the Federal Energy Regulatory Commission.

1.11 "Generating Facilities" are those Facilities used or constructed by the Licensee for the purpose of generating or producing electric energy.

1.12 "High Voltage Transmission Lines" means power lines

designed to transport electricity at 138 kilovolts (138 kv) or more.

1.13 "ICC" means and refers to the Illinois Commerce Commission or other authority succeeding to the regulatory powers of the Illinois Commerce Commission.

1.14 "Liability" includes, but is not limited to: actual or claimed loss or damage to property or injury to or death of persons; actual or claimed responsibility for such loss, damage, injury or death; and any and all judgments, decrees, costs and expenses of every sort and kind incident to such loss, damage, injury, death or responsibility, including, but not limited to, court costs, fines and attorney's fees.

1.15 "Municipal Electric Representative" is the person or persons designated by the City to be responsible for the day-to-day implementation of this Ordinance on behalf of the City during regular office hours.

1.16 "Municipal Emergency Electric Representative" is the person or persons designated by the City to be responsible for the implementation of this Ordinance on behalf of the City during emergencies and at all times other than the City's regular office hours.

1.17 "Other Ways" means rights-of-way within the City that are under the jurisdiction and control of a governmental entity other than the City.

1.18 "Overhead Distribution Facilities" are poles, wires, cables and other overhead apparatus used in the distribution of electricity of not to exceed 14,000 volts.



1.19 "Overhead Facilities" are Transmission and Distribution Utility Facilities located on or above the surface of the ground, including the underground foundations or supports for such facilities.

1.20 "Person" means one or more individuals, associations, firms, partnerships, trusts, private corporations, municipal corporations, receivers, or trustees.

1.21 "Public Property" means all real property and all improvements thereon, owned, leased to, leased by or otherwise controlled by the City.

1.22 "Public Ways" means the surface, the air space above the surface and the area below the surface of any public right-of-way, including, but not limited to, any street, highway, avenue, drive, boulevard, lane, path, alley, sidewalk, waterway, bridge, tunnel, park, parkway or other public right-of-way including public utility easements or rights-of-way over which the City has jurisdiction, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in which the City holds rights sufficient, without consent of any other Person, to permit Licensee the use thereof for the purpose of installing or maintaining Licensee's Electric System.

1.23 "Transmission and Distribution Facilities" include all lines, equipment and structures used in the transmission, distribution or sale of electric energy, wherever located. Transmission and Distribution Facilities include High Voltage

## Transmission Lines.

1.24 "Underground Facilities" are Transmission and Distribution Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

1.25 "Utility Facilities" are and refer to and include, but are not limited to, property, land, structures, equipment, plants, works, systems and improvements of the Licensee, such as pipes, electric substations, conduits, wires, transformers, cables, poles and meters, used in the production, transmission, distribution or sale of electricity within the City. "Utility Facilities" includes all Generating Facilities, Transmission and Distribution Facilities, Overhead Facilities and Underground Facilities.

## SECTION 2. RULES OF CONSTRUCTION

This Ordinance shall be construed in accordance with the following provisions.

2.1 When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

2.2 The words "shall" and "will" are mandatory and the word "may" is permissive.

law.

9.6 Small Power Production and Cogeneration. The City expressly reserves the right to engage in the production of electric energy, both from conventional power plants and from cogeneration and small power production facilities.

#### SECTION 10. TERM AND TERMINATION

10.1 Term. The franchise granted by this Ordinance shall last for a term of fifty (50) years from March 5, 1999, except that at the sole option of the City, it may be terminated at the end of the 35th year thereafter, provided that the City notifies Edison in writing of its intent to terminate within the first three months of the 35th year.

10.2 Acceptance. The Licensee shall accept this Ordinance by filing with the Clerk an unconditional written acceptance hereof, to be duly executed according to law, along with proof of compliance required by Sections 14.2 and 14.3. The failure of the Licensee to so accept this Ordinance within 30 days of enactment shall be deemed a rejection hereof by the Licensee, and the rights and privileges herein granted shall absolutely cease and determine unless said period of time shall be extended by an ordinance duly passed by the Corporate Authorities for that purpose before the expiration of the 30 day period.

10.3 Effective Date. This Ordinance shall be in full force and effect on March 5, 1999, unless the City Council by ordinance, terminates the authorization herein granted within the period from one hundred eighty (180) days prior to the

effective date to the day prior to the effective date. Such termination does not require the consent or acceptance by the licensee.

10.4 Reopener. At any time, but no more than once in any 10 year period, either party may require both parties to negotiate in good faith on a proposed amendment to this Ordinance. The subject of the proposed amendment shall be set forth in written notice.

10.5 Amendments. Except for the amendments to Exhibit B required under Section 8.1, no revision, modification or amendment of this Ordinance shall be effective unless it has been passed by the Corporate Authorities and accepted by the Licensee in writing.

10.6 Renewal. At any time during the first 60 days of the last year occurring prior to the expiration date of this ordinance, Edison may request the City to enter into negotiations toward renewing or extending this Ordinance. Any renewal or extension shall be according to terms that are mutually agreeable and the City shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Ordinance.

10.7 Termination. The rights and obligations of the Licensee under this Ordinance shall be terminated upon the end of the term of this Ordinance, or at the end of the 35th year if the City has exercised its option to terminate under Section 10.1, or upon the Licensee's forfeiture as provided in Section 11.

10.8 Rights Upon Termination.

10.8.1 Upon any termination of its rights and obligations under this Ordinance, the Licensee shall not refuse to provide electric service to any potential customers

within the City unless a petition for abandonment has been filed with and approved by the ICC.

10.8.2 Notwithstanding the termination of the Licensee's rights and obligations hereunder, by forfeiture or otherwise, the Licensee shall remain subject to all other applicable regulations and authority of the City, without limitation, as long as the Licensee continues to provide electrical service within the City or the Licensee's Utility Facilities remain in the Public Ways or on Public Property.

10.8.3 Any claims for indemnification for Liability incurred by the City, its boards, committees, commissions, officers, agents and employees arising from any incidents that occurred on or before the termination of this Ordinance shall survive the termination, provided that such claims for indemnification are timely made.

## SECTION 11. REMEDIES

11.1 Subject to the limitations in Sections 11.2, 11.3 and 11.4 below, in the event the Licensee or the City fails to fulfill any of their respective obligations under this Ordinance the City or the Licensee, whichever the case may be, will have claims for breach of contract and specific performance against the other in addition to any other remedy provided under this Ordinance or otherwise provided by law, except that no remedy that would have the effect of amending the specific provisions of this Ordinance shall become effective without such action as would be necessary to formally amend the Ordinance.

11.2. In the event that the Licensee violates any terms of this Ordinance for conduct that is subject to the exclusive jurisdiction of a Competent Authority other than the City, the sole remedy for such violation shall be before that other Competent Authority. For purposes of determining the applicability of this Section 11.2, no provision of this Ordinance may be used as the sole basis to defeat the exclusive jurisdiction of such Competent Authority.

11.3. In the event that the Licensee violates any term of this Ordinance for conduct that is also a violation of another applicable City ordinance, the Licensee shall be subject to remedies under that other ordinance plus ordinary contract remedies under this Ordinance. Licensee shall not be subject to be fined under both Section 11.6 of this Ordinance and another ordinance of the City for the same conduct.

11.4 Subject to the limitation of Section 11.2, at the option of the City, upon the finding by the City that the Licensee has failed or refused to observe any terms and conditions of this Ordinance, the City may notify the Licensee in writing of the terms and conditions which it has not observed. The notice shall inform the Licensee of the actions which the Licensee must take to correct the violation and shall grant the Licensee a reasonable period of time to cure such failure or violation. In the case of an emergency, the notice need not be made in writing. If a Competent Authority other than the City has determined that the action giving rise to the City's notice constituted a violation of an applicable

rule, regulation or order of such Competent Authority, then the cure period granted by the City shall be no less than the cure period ordered by such Competent Authority. If the Licensee does not eliminate or correct such failure or violation in accordance with the notice, the Licensee's rights under this Ordinance may be forfeited or the Licensee may be subjected to any other remedies afforded by this Ordinance, including the assessment of fines.

11.5 In the event that a Competent Authority revokes or suspends any license, certificate or other authorization held by the Licensee for the purposes of either operating any portion of its Utility Facilities within the City or providing electrical service within the City, then the Licensee's rights under this Ordinance shall likewise be revoked or suspended, without further notice from the City. The Licensee's rights under this Ordinance shall be reinstated (1) if the Competent Authority rescinds its revocation or suspension; (2) if the revocation or suspension order is overturned upon review by a Competent Authority; (3) if the Competent Authority reinstates the Licensee's license; or (4) if the suspension expires of its own terms. The original termination date of this Ordinance shall not be affected if the rights forfeited under this Ordinance are reinstated as provided herein.

11.6 If, after failing to correct a violation of the terms and conditions of this Ordinance in accordance with the notice issued to the Licensee under Section 11.4, the Licensee is found guilty of violating any provision of this Ordinance for which the City is a Competent Authority, then the Licensee shall be fined not

less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**SECTION 12. NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

**12.1 Non-Discrimination.** The Licensee represents that it will not discriminate against any person employed or seeking employment with respect to hiring, promotion or tenure, or to terms, conditions or privileges of employment, on account of race, color, sex, religion, national origin or ancestry, including, without being limited to, any employment practice whereby the Licensee or any agency engaged or used by the Licensee makes inquiry with respect to the race, color, sex, religion, national original or ancestry of any applicant for employment by the Licensee.

**12.2 Affirmative Action.**

**12.2.1** The Licensee shall make good faith efforts to expand opportunities for minorities and women in all areas of employment, including but not limited to: hiring, promotion, recruitment or recruitment advertising, compensation, and selection for training and apprenticeship.

**12.2.2** The Licensee shall continue and expand its minority purchasing program and its efforts to promote and enhance contracting opportunities for minorities.



**SECTION 13. LAWS, RULES AND REGULATIONS**

13.1 Compliance with Laws, Rules and Regulations. While this Ordinance remains in effect, the Licensee shall promptly and fully comply with all applicable statutes, ordinances, judgments, decrees, orders, rules and regulations of any Competent Authority other than the City having jurisdiction over the Licensee's activities.

13.2 Compliance with Municipal Ordinances, Rules and Regulations. While this Ordinance remains in effect, the Licensee shall promptly and fully comply with all applicable orders, rules, regulations and ordinances of the City.

13.3 Violation of Laws, Rules and Regulations. Any claim by the City that the Licensee has violated any provision of this Section 13, shall be subject to the procedures set forth in Section 11 of this Ordinance.

**SECTION 14. INDEMNIFICATION, INSURANCE AND PERFORMANCE SECURITY**

14.1 Indemnification. The Licensee shall indemnify, become responsible for and forever save harmless the City, its boards, committees, commission, officers, agents and employees from any and all Liability incurred by them:

14.1.1 for loss or damage to property of the Licensee, its officers, agents, employees, licensees and invitees in the Public Ways or on Public Property pursuant to this Ordinance or for injury to or death of any such employee, agent or licensee while in the Public Ways or on Public Property

pursuant to this Ordinance, however arising; and

14.1.2 arising directly or indirectly from any act or omission of the Licensee or any Person acting on its behalf done or claimed to have been done by virtue of or pursuant to this Ordinance or by virtue of or pursuant to order, rule, regulation or authorization by the ICC.

14.2 Comprehensive Liability Insurance or Self-Insurance. At all times while this Ordinance remains in effect, and in recognition of the indemnification provided in the foregoing Section 14.1, the Licensee shall, at its own cost and expense, maintain a program of third party liability insurance and/or self-insurance to protect the City, its officers, employees and agents from any liability for bodily injury, death, and property damage occasioned by the activities of the Licensee under this Ordinance. As proof of compliance with this requirement, the Licensee shall, during the life of this ordinance, keep on file with the Clerk a certificate of insurance and/or an affidavit of self-insurance. Said certificate and/or affidavit shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by an employee or officer of the Licensee who has knowledge of the Licensee's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations.

14.3 Indemnification Security. As security for the indemnification required in Section 14.1, the Licensee shall, during the life of this Ordinance, keep on file with the Clerk a

good and sufficient bond in the penal sum of Five Thousand Dollars (\$5,000.00) conditioned to protect and indemnify the City as provided in Section 14.1. Said bond shall be subject to the approval of the Corporate Authorities. The City reserves the right: (1) to require the Licensee to renew said bond whenever, in the opinion of the Corporate Authorities, such action may be necessary; and (2) to require the Licensee to increase the amount of said bond or to provide additional or other security in the event said bond is insufficient to fully cover a claim made against it, provided that the amount of the increased bond does not exceed the total amount of the claim made against it, and provided further that the value or amount of such other or additional security does not exceed Five Thousand Dollars (\$5,000.00) or the total amount of the claim made against the original bond, whichever is greater.

## SECTION 15. MISCELLANEOUS PROVISIONS

### 15.1 Transfer and Assignment.

15.1.1 Except in the event of the merger, consolidation or reorganization of the Licensee, the Licensee shall not have the right to assign its rights and privileges under this Ordinance or to otherwise transfer it in any manner whatsoever, without the prior written approval of the City, pursuant to an ordinance enacted by the Corporate Authorities.

15.1.2 In the event of a transfer or assignment of the Licensee's rights and privileges under this Ordinance, all provisions of this Ordinance which are obligatory upon, or

which inure to the benefit of, the Licensee shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of the Licensee.

15.2 Ordinance as Contract. This Ordinance shall have the effect of and shall be a contract between the City and the Licensee and shall be a measure of the rights and obligations of the City as well as of the Licensee.

15.3 Ordinance Requirements as Voluntary Undertaking. The Licensee and the City understand that the general operations of the Licensee are under the jurisdiction of the ICC and the FERC. The Licensee has voluntarily agreed to perform the duties and obligations set forth in this Ordinance, provided that such performance does not violate any applicable regulatory standard or any applicable statutes, ordinances, or judgments or decrees of administrative or judicial tribunal.

15.4 Scope of Ordinance. No privilege or exemption is granted or conferred to Licensee by this Ordinance unless specifically provided herein. The permission and authority granted by this Ordinance are not intended to limit or modify any agreement, franchise, license or permit previously granted by the City to any other Person for the use or occupancy of the Public Ways, and the Licensee shall therefore exercise the rights granted by this Ordinance in such a manner as shall neither unreasonably interfere with the rights, nor endanger or impair the property, of other contractors, franchisees, licensees and permittees in the

Public Ways. The City agrees to require other contractors, franchisees, licensees and permittees of the City to exercise their rights under such agreements, franchises, licenses and permits in such a manner as shall neither unreasonably interfere with the rights nor endanger or impair Utility Facilities of the Licensee located in the Public Ways.

15.5 Expenses To Be Borne By Licensee. Unless specifically provided to the contrary, the Licensee shall be responsible for procuring, through rates or otherwise, the revenues necessary to meet the expenses of its performance under and its compliance with this Ordinance.

15.6 Most Favored Nations Provisions.

15.6.1 In the event that the Licensee accepts from any Illinois municipality, other than the City of Chicago, an electric ordinance or amendments to an electric ordinance containing terms, conditions or provisions different from those contained in this Ordinance, or if any other arrangement is at any time made with any municipality other than the City of Chicago, the Licensee shall inform the City in writing of such fact and provide a copy of such ordinance or other arrangement to the City. If, within 90 days of such notice, the City adopts such other electric ordinance or other arrangement of such other municipality, the Licensee agrees it will accept such ordinance or other arrangement. In such event, the term of the new ordinance will expire at the time the original ordinance was scheduled to expire, unless

otherwise agreed by the parties. This provision shall not apply to the term of the ordinance if the term is for more than 50 years.

15.6.2 In the event that the City grants any benefit to any other electric utility regarding the use of the Public Ways, such benefit shall be offered in writing to the Licensee, under the same terms and conditions, within 30 days after it has been granted to such other electric utility. If the Licensee requests the extension of the benefit to it, the City will take such steps as to provide such benefit to the Licensee under the same terms and conditions, including amending this Ordinance accordingly.

15.7 Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

15.8 Repealer. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance, or containing provisions granting any right, privilege or license to the Licensee or to any of its predecessor companies, including An Ordinance Authorizing Commonwealth Edison Company (Public Service Company Division), Its Successors and Assigns, to Construct, Operate and Maintain an Electric Light and Power System in and through the City of Evanston, Cook County, Illinois, passed March 5, 1957, are hereby repealed. However, any claims for indemnification timely and properly made under that last named

2.3 The provisions of this Ordinance shall be read as a whole so as to effect the purposes of this Ordinance.

2.4 Section headings are descriptive and used merely for the purpose of organization. Where inconsistent with the text, section headings are to be disregarded.

### SECTION 3. RIGHTS GRANTED

#### 3.1 Grant of Right to Use Public Ways and Public Property.

The City hereby grants to the Licensee the right, permission and authority to construct, operate and maintain in and through the City its Electric System and to construct, operate and maintain all such Utility Facilities as may be necessary or convenient for such Electric System, in, upon, along, over, across, above and under the Public Ways and Public Property in the City, for the period of time and upon the terms and conditions hereinafter specified.

#### 3.2 Emergency Access to Public Ways and Public Property.

In the event of an emergency which the Licensee reasonably believes poses a threat of immediate harm to the public or to any of the Utility Facilities, the Licensee is hereby granted access to the Public Ways and Public Property, without a permit, to ameliorate the threatened harm. The Licensee shall promptly advise the City of the emergency.

3.3 Exemption From Parking Restrictions. While used in the course of installation, repair and maintenance work on the Utility Facilities, Licensee's vehicles shall be exempt from parking restrictions of the City.

**SECTION 4. CONDITIONS OF GRANT**

**4.1 Construction and Location of Facilities.**

4.1.1 The Licensee or any Person acting on its behalf may construct, repair, maintain, renew or replace Utility Facilities located in the Public Ways, on Public Property, or on Other Ways, subject to the following conditions:

4.1.1.1 The Licensee shall obtain a permit in accordance with the applicable ordinances of the City. The Licensee shall include with its permit application such plans and schedules for restoration of the Public Ways or Public Property as the City may require by ordinance.

4.1.1.2 The Licensee shall obtain all necessary approvals from any Competent Authority for the performance of said work, and such work shall be performed in accordance with the plans and specifications approved or prescribed by Competent Authority.

4.1.1.3 Except as provided in this Ordinance, neither the Licensee nor any Person acting on its behalf shall take any action or allow any action to be done which may impair or damage the Public Ways, any property located on the Public Ways, or the Public Property.



4.1.1.4 Neither the Licensee nor any person acting on its behalf may interfere unreasonably with the use of the Public Ways or Public Property by the general public or by other Persons authorized to use or be present upon said Public Ways or Public Property.

4.1.1.5 The Licensee shall provide reasonable notice to the City before beginning any work in Other Ways within the City.

4.1.1.6 To the extent practicable, the Licensee shall notify the City of plans to undertake any construction, repair, maintenance or replacement of Utility Facilities in conjunction with the annual planning meeting provided for in Section 7.8. This notice shall be in addition to any other notice requirements imposed by other applicable ordinances. The notice requirements of this paragraph do not apply to the installation of lateral service connections to individual customers.

4.1.1.7 In the event of an emergency, if prior acquisition of formal authorization is not possible, the Licensee or any Person acting on its behalf may undertake the work described above without first acquiring formal authorization, provided that the Licensee uses its best efforts to contact the Municipal Emergency Electric Representative prior to performing such work and provided further that the Licensee shall apply for such formal

authorization at the earliest reasonable opportunity.

4.1.2 All Transmission and Distribution Facilities erected hereunder shall be placed in alleys wherever practicable so to do, and shall be so placed, wherever located, so as not to interfere unnecessarily with travel on or access to the Public Ways.

4.1.3 Unless specifically permitted by the City, all Utility Facilities erected under this Ordinance shall be located so as not to injure any drains, sewers, catch basins, water pipes, pavements or other public improvements.

4.1.4 All poles shall be of sufficient length to be anchored substantially in the ground and to extend to a height of at least 25 feet above the surface. Poles shall be adequately braced wherever necessary.

4.1.5 All wires, conductors, transformers and other apparatus that are attached to utility poles shall be at a sufficient height to preclude interference with free use of the Public Ways.

4.1.6 Prior to filing any application with a Competent Authority for the construction of any Generating Facilities or High-Voltage Transmission Lines within the corporate limits of the City, the Licensee shall meet with the City to discuss such plans.

4.1.7 Any Utility Facilities in the Public Ways that have been, or are at any future time acquired, leased or

utilized in any manner by the Licensee are thereupon to be deemed authorized by and shall be subject to all the provisions of this Ordinance.

4.1.8 Except as otherwise provided herein, the Licensee shall not be required to change the location, the height above, or the depth below the Public Ways of those Utility Facilities in place as of the effective date of this Ordinance.

#### 4.2 Relocation or Removal of Facilities.

4.2.1 Upon receiving at least 30 days notice from the City, the Licensee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Utility Facilities in Public Ways or Public Property whenever the Corporate Authorities shall have determined that such removal, relocation, change or alteration: (1) is reasonably necessary for the construction, repair, maintenance, improvement or use of such Public Ways or Public Property; (2) is reasonably necessary for the location, construction, replacement, maintenance, improvement or use of other property of the City; or (3) is reasonably necessary for the operations of the City. The City agrees to engineer the projects in the Public Ways or Public Property either so as not to require any such removal, relocation, change or alteration or, if that is not reasonably feasible, so as to minimize the Licensee's expenses in making such removals, changes or alterations. The Licensee will not be responsible

for the expense of removals, relocations, changes or alterations required by the City primarily for the purpose of assisting either private projects or a municipal electric utility.

4.2.2 Whenever it shall be necessary for the City or any other Person to move along or across the Public Ways, any vehicle, equipment, structure or other object of such height or size as will interfere with any of the Licensee's Overhead Facilities, the Licensee shall temporarily remove such Overhead Facilities from such place as must necessarily be crossed by such vehicle, equipment, structure or other object, provided that: (1) the Licensee shall receive at least 24 hours notice thereof from the City Electric Representative; (2) the Licensee shall have received payment for such removal, where payment is required; and (3) such temporary removal shall be done at such time of the day or night as will least interfere with the Licensee's use of such wires and poles for the benefit of the inhabitants of the City and the successful operation of the Licensee's Electric System. It is understood that the Licensee shall bear the expense of any such temporary removals for projects being undertaken by or for the benefit of the City or its agent and that the expense of all other such temporary removals shall be borne by the Person requesting such removal. All questions as to the time when any of said wires and poles shall be so cut, removed or adjusted for the purpose aforesaid shall be decided by the

Municipal Electric Representative, and such decision shall be final.

**4.3 Restoration of Public Ways or Public Property.**

4.3.1 When the Licensee, or any Person acting on its behalf, does any work in or affecting the Public Ways or Public Property, it shall, at its own expense, remove any obstructions therefrom and restore such Public Ways or Public Property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

4.3.2 If weather or other conditions do not permit the complete restoration required by this paragraph, the Licensee may temporarily restore the affected Public Ways or Public Property upon receiving the approval of the City Electric Representative, provided that such approval shall not be unreasonably withheld. Such temporary restoration shall be at the Licensee's sole expense and the Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

4.3.3 Upon the request of the City, the Licensee shall restore the Public Ways or Public Property to a better condition than existed before the work was undertaken, provided that the City shall bear any additional costs of such restoration.

4.3.4 If the Licensee fails to restore the Public Ways or Public Property or to remove any obstruction therefrom, as required by this paragraph, the City may, after communications with the Edison Representative and after affording the Licensee a reasonable opportunity to correct the situation, give seven days written notice to the Licensee, and thereafter restore such Public Ways or Public Property or remove the obstruction therefrom. No such prior written notice shall be required in the event that the City determines that an emergency situation exists. The Licensee shall pay the City for any such restoration or removal within 14 days after receiving a bill from the City for such work.

4.4 Trimming of Trees and Vegetation. From time-to-time, when the Licensee believes it to be warranted by existing conditions, the Licensee shall, at its own expense, cause the trees and vegetation growing upon or overhanging any of the Public Ways or Public Property in the City where Utility Facilities are erected to be trimmed in such a manner that there shall be a proper clearance between the nearest wires or equipment and any portion of the trees or vegetation. The trees and vegetation shall be trimmed so that no branches, twigs or leaves come in contact with or in any way interfere with the Utility Facilities. The Licensee shall notify the City Electric Representative no less than seven days before it plans to perform such work. The City Electric Representative shall approve the time, place and manner of performing such work.

#### 4.5 Tree Location Program.

4.5.1 Tree Removal and Replacement. The Licensee and the City agree to develop a cooperative program for the removal and replacement of certain municipally owned trees located in the Public Ways or on Public Property which conflict or potentially conflict with the Overhead Facilities. The trees to be removed and replaced shall be designated by the City after consultation with the Edison Representative. Within 30 days after receipt of a written notice from the City of trees to be removed, the Licensee shall schedule a removal date acceptable to the City, and shall remove the designated trees and dispose of all tree brush except that the City shall dispose of all stumps and logs over four inches in diameter. The City shall purchase, plant and maintain all trees planted pursuant to the tree removal and replacement program, and the Licensee shall reimburse the City for one-half of the City's cost of tree replacement, up to a maximum amount of \$125 per tree. The reimbursement shall be made to the City within 60 days after the Licensee's receipt of a written request for reimbursement.

4.5.2 Tree Selection. The City agrees to implement a policy for the purpose of regulating tree planting on the Public Ways or Public Properties so as to allow only such lower growing tree species as will not attain a mature height that will conflict with primary electrical lines, and thereby require line clearance maintenance. Such policy shall not

preclude planting upright, columnar or pyramidal shaped trees to the side of power lines, thereby avoiding the need for severe and disfiguring line clearance tree trimming.

4.5.3 Tree Location. The City agrees that it will attempt to locate new trees and other new vegetation on the Public Ways and Public Property so as to minimize contact with Utility Facilities.

4.5.4 Duration of Program. The Tree Location Program provided for in the foregoing paragraphs shall remain in effect for the first 10 years of this Agreement, after which it shall be renewed on terms that are mutually agreeable.

4.6 Use of Utility Facilities. The Licensee shall, when requested by the City, (1) permit its Overhead Facilities to be used for the suspension and maintenance of wires and (2) permit its Underground Facilities to be used for the running and maintenance of wires, both as may be reasonably required either by the City or by other Persons holding a valid municipal license or other valid authorization to use the Public Ways or Public Property. Except as provided in the following sentence, the City shall be entitled to make such use without charge. Such use by other Persons, and such use by the City for a proprietary purpose, shall be subject to such terms and conditions, including fees, as the Licensee may reasonably require. Such use of the Utility Facilities shall be under the supervision and direction of the Licensee so as not to materially interfere with the Licensee's present or reasonably contemplated usage of the Utility Facilities. Such use may not be



for the purpose of allowing any Person to transmit or distribute electricity. The City agrees to save and keep harmless the Licensee from any and all liability incurred by the Licensee as a result of the City's use of the Utility Facilities pursuant to this paragraph. In no event shall the City be responsible for liability incurred by the Licensee as a result of the use of the Utility Facilities by other Persons.

**4.7 Removal of Facilities.** The Licensee shall promptly remove from the Public Ways and Public Property all above ground wires and the supports therefor whose use is abandoned and shall either promptly remove or board up or render reasonably inaccessible all other Utility Facilities whose use is abandoned or discontinued. The Licensee shall take reasonable steps to prevent any such non-removed Utility Facilities from becoming nuisances.

**4.8 Undergrounding of Facilities.** The Licensee will relocate its Overhead Distribution Facilities in or on Public Ways and Public Property in the City, other than alleys, by placing the Overhead Distribution Facilities underground, or rerouting them if necessary, if so requested by the City. The Overhead Distribution Facilities to be placed underground or rerouted shall not exceed 500 feet annually and will be determined by the mutual agreement of the Licensee and the City; the agreement of the Licensee will not be unreasonably withheld. Scheduling of the requested work to be performed will be in accordance with the Licensee's normal work scheduling practices. The total cost for such work including, but not limited to, material, labor and overhead shall not exceed .40

percent of the revenues collected by the Licensee in the prior calendar year for electric service in the City; except that if, on or before November 15, 1991, the Licensee had made a written offer to the City to underground its Overhead Distribution Facilities at the rate of either 500 feet annually or 2,500 feet every five years, then the cost of such work shall not be subject to the foregoing limitation. The number of feet available to be undergrounded or rerouted in any year which are not utilized may be carried forward for utilization in future years.

**SECTION 5. SERVICE CONSIDERATIONS**

**5.1 Adequate Supply of Power.** The Licensee shall at all times take all reasonable and necessary steps to assure an adequate supply of electricity to its customers within the City at the lowest reasonable cost consistent with long term reliable supplies. The Licensee shall from time to time make such enlargements and extensions of its Facilities as are necessary to adequately provide for the requirements of the City and its residents.

**5.2 Duty to Provide Electricity.** The Licensee shall furnish electricity within the corporate limits of the City to the City and to the inhabitants thereof, and to any person or persons or corporation doing business in the City. All such electricity shall be furnished at the rates and under the terms and conditions as provided from time-to-time by the ICC.

**5.3 Nondiscrimination.** The Licensee shall not, as to rates, charges, service, facilities, rules, regulations or in any other

respect, make or grant any preference or advantage to any corporation or person or subject any Person to any prejudice or disadvantage; provided that nothing in this grant shall be taken to prohibit the establishment from time to time of graduated scales of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

#### 5.4 Maintenance of Facilities.

5.4.1 All Utility Facilities shall be maintained in good condition.

5.4.2 All Utility Facilities shall be maintained in such a manner that they do not create hazardous conditions for the Public Ways or Public Property.

#### 5.5 Service Interruptions.

5.5.1 The Licensee shall make all reasonable efforts to prevent power surges and interruptions of service. When power surges or interruptions occur, the Licensee shall reestablish service with the shortest possible delay consistent with general safety and public welfare.

5.5.2 The Licensee shall make all reasonable efforts to notify the Municipal Electric Representative or the Municipal Emergency Electric Representative of major service interruptions within the City within one hour after the Licensee learns of such interruption. If, at the time such notification is made, the Licensee is not able to provide an estimate of when service is expected to be restored, such information shall be provided to the Municipal Electric

Representative or the Municipal Emergency Representative as it becomes available. A major service interruption is defined as: (1) an outage with an interrupted load of greater than 1,000 KVA and persisting for 15 minutes or more; or (2) any outage with a significant impact, as such term may be defined by agreement between the City and the Edison Representative, lasting 15 minutes or more.

5.5.3 No less than 24 hours prior to beginning scheduled maintenance, scheduled repairs or other scheduled work on its Utility Facilities that may result in an interruption of electric service to customers in the City, the Licensee shall make a good faith effort to provide written notice to potentially affected customers and to the Municipal Electric Representative of the scheduled time and estimated duration of the work. The Licensee shall make a good faith effort to notify potentially affected customers and the Municipal Electric Representative prior to performing any emergency work on its Utility Facilities that may result in an interruption of electric service to customers in the City.

5.5.4 The Licensee shall keep records of interruptions affecting service within the City. An interruption will be considered as a failure of any portion of the system or equipment whereby the voltage is reduced to less than 50 percent of the standard voltage for a period longer than one minute, except that where automatic reclosing equipment is used only "circuit breaker lockout" shall be so considered,

unless the ICC promulgates a rule or regulation setting forth a different standard for defining an interruption; provided that the Licensee shall notify the City of any docket opened by any Competent Authority that would change the standard, and provided further that the standard set forth herein shall remain in effect if the Competent Authority sets no standard by rule or regulation. The record shall show the date, time of day, duration, extent and cause of the interruption.

5.5.5 The Licensee shall also maintain records showing the average customer outage frequency and duration both within the City and for the Licensee's system as a whole.

5.5.6 Upon the request of the City, but no less than once a year, the Licensee shall provide the City with reports providing the information contained in the records maintained pursuant to Sections 5.5.4 and 5.5.5.

5.5.7 On October 23, 1991, the Licensee filed with the ICC the rider set forth in Exhibit A hereto to provide for a service policy allowing customers whose electric service is interrupted because of an operating error or equipment malfunction for twelve or more consecutive hours to receive a credit against the monthly customer charge.

**SECTION 6. ECONOMIC AND TECHNOLOGICAL PROVISIONS**

**6.1 Technological Advances.** The Licensee shall investigate, develop and incorporate technological advances into its equipment and service in its sole discretion and subject to order of Competent Authority. Upon the request of the City, the Licensee shall discuss such technological advances at the annual meeting provided in Section 7.8.

**6.2 Cogeneration and Small Power Production Facilities.** The Licensee shall provide, on a timely basis, such information as may reasonably be required for interconnection with the Licensee's system by the City, if the City desires to develop a Qualifying Facility, and by any Person doing business in the City that desires to develop a Qualifying Facility related to its business in the City. A Qualifying Facility is a cogeneration facility or small power production facility which meets the criteria for qualification set forth in subpart B of 18 C.F.R. 292, as it may be amended from time to time.

**6.3 Demand Side Management.** The Licensee shall make systemwide expenditures in connection with the least cost planning process of \$25,000,000 through 1996 in furtherance of its recognition of the City's strong commitment to energy conservation and compliance by the Licensee with the least cost planning provisions of the Public Utilities Act. In addition, to the extent that Energy Efficiency/DSM programs are identified during the five year period described above that are cost-justified in the good faith judgment of the Licensee, the Licensee shall expend at least

an additional \$25,000,000 in the implementation of such programs. The Licensee shall implement cost-effective Energy Efficiency/DSM programs, consistent with the Licensee's least cost planning requirements as an integral part of the Licensee's provision of electricity to its customers. Examples of programs which the Licensee will consider for its Energy Efficiency/DSM program are home weatherization and the maintenance of appliances and air-conditioning systems at peak efficiency. The Licensee shall be required to implement only those Energy Efficiency/DSM programs that are approved by the ICC and for which the Licensee can recover from its customers (i) program costs, (ii) offsets for lost revenue and stranded investment (if any) resulting from such program and (iii) any appropriate return to the Licensee on such costs, lost revenues and stranded investments, as approved by the ICC. The Licensee shall provide the City with notice of the specifics of the Energy Efficiency/DSM programs within two business days of the ICC's acceptance of the Licensee's proposal for filing.

**6.4 Environmental Protection.** The Licensee shall make such efforts as it deems necessary to meet the standards required for its Utility Facilities in the City to meet applicable federal and state air and water pollution laws. Upon the request of the City, the Licensee shall discuss such environmental matters at the annual meeting provided for in Section 7.9.

**6.5 Economic Sources of Power.** As part of its provision of electricity to the City, the Licensee shall take efforts to obtain electric power from sources other than its Electric System, when it

considers obtaining such power to be cost effective and as may be required by 83 Ill.Admin.Code, Part 430, as it may be amended from time to time. In connection therewith, the Licensee shall make such adjustments to its rates as required by the ICC.

## SECTION 7. ADMINISTRATION

### 7.1 Representatives.

7.1.1 The Licensee agrees to maintain such local offices and facilities as it deems adequate for the purposes of providing repair and maintenance services and personnel available during office hours to address concerns the City might have regarding the provision of electric service and the administration of this Ordinance. The Licensee shall provide the City with the location and telephone number of the local office and the name and telephone number of the Edison Representative.

7.1.2 The Licensee further agrees to maintain such local offices and facilities as it deems adequate for the purposes of providing the City with 24-hour emergency service pertaining to the operation of the Utility Facilities. The Licensee shall provide the City with the location and telephone number of the local office, the name of the Edison Emergency Representative and the telephone number or numbers at which the Edison Emergency Representative can be reached 24 hours a day.

7.1.3 The City agrees to provide the Licensee with the



name of the Municipal Electric Representative and the telephone number or numbers at which the Municipal Electric Representative can be reached during office hours.

7.1.4 The City agrees to provide the Licensee with the name of the Municipal Emergency Electric Representative and the telephone number or numbers at which the Municipal Emergency Electric Representative can be reached 24 hours a day.

7.1.5 The City and the Licensee agree that each one will promptly notify the other party in the event that any of the information required under the foregoing sections is changed, so as to keep such information current at all times while this Ordinance remains in effect.

7.2 Facilities Maps. Upon the request of the City, the Licensee shall provide the City with a current map or set of maps, showing the location of all Utility Facilities installed in or under Public Ways within the corporate limits of the City provided that the Licensee shall not be required to prepare new maps to comply with this provision if no such maps exist.

7.3 Duty to Provide Information. The Licensee shall, from time to time, furnish such additional information as the City may reasonably deem to be necessary to enable it to determine whether the Licensee is complying or has complied with the provisions of this Ordinance, other than those provisions specified in Section 11.2. The Licensee shall not be required to provide information as to which it has a legal privilege to refuse to provide.

**7.4 Disclosure of Documents or Information.** The City agrees that no documents or information provided to the City by the Licensee in accordance with this Ordinance shall be made available to the public if such documents or information are exempt from disclosure under the provisions of the Freedom of Information Act or Section 5-108 of the Public Utilities Act, as such statutes may be amended from time to time.

**7.5 Inspection of Facilities.** The Licensee shall permit the City, at reasonable times and upon reasonable notice, to inspect the Utility Facilities within the corporate boundaries of the City so as to determine whether the Licensee is complying or has complied with the provisions of this Ordinance other than those provisions specified in Section 11.2.

**7.6 Superintendent of Public Works.** The Superintendent of Public Works, or such other person as the Corporate Authorities may designate from time to time, is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City to administer and enforce the provisions of this Ordinance and to investigate any alleged violations or failures of the Licensee to comply with the provisions hereof or to adequately and fully discharge its responsibilities and obligations hereunder.

**7.7 Notices.**

**7.7.1 Notice to City.** Unless otherwise specified herein, all notices from the Licensee to the City under this ordinance shall be made in writing and delivered to

Kirsten Davis at the following address:

Ms. Kirsten Davis  
City Clerk  
City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60201

7.7.2 Notice to the Licensee. Unless otherwise specified herein, all notices from the City under this ordinance shall be made in writing and delivered to Ms. Kathryn Houtsma, Director, Regulatory Affairs, at the following address:

Ms. Kathryn Houtsma  
Director, Regulatory Affairs  
Commonwealth Edison Company  
P.O. Box 767  
Chicago, Illinois 60690.

7.7.3 Changes in Person or Place for Notification. In the event that either the City or the Licensee changes the person to whom written notices are to be directed or the address to which such notices are to be sent, the party making the change shall promptly notify the other party of such change in writing.

7.7.4 All notices shall be effective upon their receipt by the person or persons to whom they are directed.

7.8 Coordination of Construction Activities. The Licensee and the City agree to exercise their best efforts to coordinate to the extent practicable the timing of construction activities of each so as to minimize any public inconvenience that might otherwise occur. In conjunction with this goal, shortly after January 1 of each year, as agreed by the parties, the Licensee

shall meet with the City and such other users of the Public Ways as may be invited by the City to discuss scheduling of construction in the Public Ways in that calendar year.

7.9 Annual Meeting. No less than once a year, the Licensee shall attend a meeting of the Corporate Authorities to provide a status report of the Licensee's activities within the City during the previous year, to outline its planned activities for the next year, and to answer questions the Corporate Authorities may have regarding the Licensee's performance under this Ordinance.

7.10 Notice of Boundary Changes. The City agrees to notify the Licensee in writing of any ordinance, statute or court or administrative action that causes a change in the City's boundaries. Failure to give such notice excuses the Licensee both from non-compliance with this Ordinance and from the non-collection of municipal utility taxes within the area affected until such notice is given.

7.11 Notice of Regulatory Changes. In the event that either the ICC or the FERC opens a docket or proposes an administrative rule that 1) would directly affect the Licensee and 2) would, in the Licensee's opinion, be inconsistent with or change any provision of or duty under this Ordinance, the Licensee, within seven days of determining such inconsistency, shall notify the City of such docket or proposed rule and what it thinks is the inconsistency. The Licensee shall make a good faith effort to make such determination and to give such notice prior to the expiration of any intervention period or comment period.

**7.12 Notice of Actions Before Competent Authorities.** In the event that the Licensee becomes a party to any proceedings of a Competent Authority that 1) would directly affect the Licensee and 2) would, in the Licensee's opinion, be inconsistent with or change any provision of or duty under this Ordinance, the Licensee, within seven days of determining such inconsistency, shall notify the City of such proceeding and what it thinks is the inconsistency. The Licensee shall make a good faith effort to make such determination and to give such notice prior to the expiration of any intervention period or comment period.

**7.13 Notice of Requests for Rate Changes.** The Licensee shall notify the City of any applications the Licensee may make to the ICC to effectuate any change in its rates, including the riders thereto. The notice shall be made in accordance with the notice provisions of this Ordinance, and shall be sent no later than two business days following the date on which the rate application is accepted for filing by the ICC. For each rate or charge affected by the application, the notice shall contain a statement of the existing rates or charges and all proposed rates or charges. If the proposed rates or charges are to be phased in over a period of time, the notice shall also contain a statement of the proposed rates or charges for each increment and the time period each incremental increase is to be in effect. Upon the written request of the City, the Licensee shall send the City a copy of the complete application filed with the ICC. This provision shall not apply to applications filed solely for the purpose of effectuating

municipal utility taxes.

**SECTION 8. COMPENSATION**

**8.1 Municipal Compensation.** The Licensee will during each calendar year throughout the life of the Ordinance, supply without charge to the City such an amount of electric energy as may be reasonably necessary for: (1) lighting and various other uses in municipal buildings solely occupied for municipal purposes and not for purposes of revenue (or such part thereof as may from time to time be so occupied) as may be identified as eligible for such electric energy by the parties; and (2) traffic signals. The foregoing arrangement shall be effective beginning with readings made after the date hereof of meters measuring electric energy for the above purposes at locations set forth in Exhibit B hereto. Exhibit B shall be amended from time to time during the term of this Ordinance so as to maintain a current list of the locations and traffic signals eligible to receive service under the terms of this section. None of said electric energy so to be supplied without charge to the City shall be used by the City for heating, street lighting, water pumping or other such power purposes. Nor shall any of said energy be resold for any purpose whatsoever.

**8.2 Waiver of Certain Fees and Charges.** The consideration provided to the City by this Ordinance shall be in lieu of: (1) any permit, license, inspection or other similar fees or charges imposed by the City to Persons for use of the Public Ways; or (2) any permit or license fee imposed by the City upon any Persons for

the operation of a business similar to that conducted by the Licensee.

**SECTION 9. MUNICIPAL RIGHTS RESERVED**

**9.1 Police Powers.** The City expressly reserves the right to adopt, from time to time, in addition to the provisions contained herein, such ordinances, rules and regulations as the Corporate Authorities may deem necessary in the exercise of the police power for the protection of the health, safety and welfare of the City's citizens and their properties.

**9.2 Regulation of Public Ways and Public Property.** The City expressly reserves the right to enforce reasonable regulations concerning access to or use of the Public Ways or Public Property, as may from time to time be provided by ordinance, including requirements for permit applications.

**9.3 Municipal Acquisition of Facilities.**

**9.3.1 Purchase.** At any time while this Ordinance remains in effect, upon written notice from the City to the Licensee, the City may offer to purchase from the Licensee any or all of the Utility Facilities located within the City, or any lesser interest thereof, free and clear of all mortgages and other liens in any manner provided for by law.

**9.3.2 Condemnation.** Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the City to acquire the property of the Licensee either by purchase or through the exercise of the right of

eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain.

9.3.3 Continuation of Service. In the event the City takes any action pursuant to this Section 9.3, the Licensee agrees that it shall continue to supply electric service within the City and shall continue to comply with the provisions of this Ordinance until the acquisition of the Utility Facilities has been finalized and the ICC has authorized the Licensee to discontinue service within the City.

9.4 Non-Exclusive Grant.

9.4.1 Nothing in this Ordinance shall be construed to grant the Licensee an exclusive franchise to operate within the corporate limits of the City.

9.4.2 The City reserves the right to make a similar use or grant a similar use in the Public Ways to any other Person.

9.4.3 The City agrees to require all other contractors, subcontractors, franchisees, licensees and permittees in the Public Ways not to interfere unreasonably with the rights of the Licensee in the Public Ways.

9.5 Right to Compete with Licensee. Nothing in this Ordinance shall be construed as a waiver of the City's rights to own and operate an electric utility in competition with the Licensee or to acquire any or all of the Licensee's Utility Facilities in such manner as may from time to time be provided by



ordinance survive this repeal.

15.9 Force Majeure. The Licensee shall not be deemed in violation of this Ordinance for the delay in performance or failure to perform in whole or in part its obligations under this Ordinance due to strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, act of public enemy, fire, flood or other act of God or by other events to the extent that such events are caused by circumstances beyond the Licensee's control and are not caused by negligence on the part of the Licensee or any Person acting on its behalf. In the event that the delay in performance or failure to perform affects only part of the Licensee's capacity to perform its obligations under this Ordinance, the Licensee shall perform such obligations to the extent it is able to do so in as expeditious a manner as possible. Licensee shall promptly notify the City Electric Representative in writing of any event covered by this Section and the date, nature and cause thereof. Furthermore, Licensee, in such notice, shall indicate the anticipated extent of such delay and the obligations under this Ordinance to be affected thereby.

PASSED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, ILLINOIS,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED:

ESTAT BISS CIVILIS ADMINISTRATIO

Mayor

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk

**EXHIBIT A**

The customer will be entitled to a reduction in charges for service equal to the Monthly Customer Charge for any month in which service to the customer is interrupted for a period of 12 consecutive hours or more due to any of the following conditions: (i) company equipment malfunction not caused by weather; (ii) Commonwealth Edison employee or contractor error; (iii) accident involving Commonwealth Edison employee or contractor; (iv) damage to company equipment caused by Commonwealth Edison employee, agent or contractor; or (v) overloaded company distribution equipment not caused by customer negligence. If the duration of any service interruption resulting from any of the causes referred to in items (i) through (v) is equal to or exceeds 24 consecutive hours, or if there is more than one such service interruption of 12 consecutive hours in a month, the customer will be entitled to an additional reduction in charges equal to the Monthly Customer Charge for such month multiplied by the number of increments of 12 consecutive hours of interruption in excess of the first such 12 consecutive hours. In applying this provision to any outage in a month in which the Customer Charge changes, the Customer Charge in effect at the start of the outage in question shall be used.

EXHIBIT B

TRAFFIC SIGNALS

[List of buildings and traffic signals to receive free service.]

Services not required at intersections of highways at which there are no  
signals shall be those which are not required at intersections of highways  
which are not controlled by traffic signals. The following are the  
services (1) which are not required at intersections of highways which are  
not controlled by traffic signals (2) which are not required at intersections  
of highways which are controlled by traffic signals (3) which are not  
required at intersections of highways which are controlled by traffic signals  
and (4) which are not required at intersections of highways which are  
controlled by traffic signals. The following are the services (1) which are  
not required at intersections of highways which are not controlled by traffic  
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of highways which are controlled by traffic signals and (4) which are not  
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