

Ordinance Number 62
AN ORDINANCE SETTLING AND RELEASING CLAIMS
AGAINST CENTRAL POWER AND LIGHT COMPANY
CONCERNING FRANCHISE FEE PAYMENTS; PROVIDING
NO PASS THROUGH OF SETTLEMENT AMOUNTS; AND
SPECIFYING TERMS FOR FUTURE FRANCHISE PAYMENTS

WHEREAS, by virtue of a franchise ordinance enacted by the City (the "Franchise Ordinance"), Central Power and Light Company ("CPL") is and has been using the City's streets, alleys, and public places for the purpose of supplying electricity;

WHEREAS, there are two pending class action lawsuits that assert claims against CPL on behalf of certain Texas cities in connection with CPL's payment obligations under the Franchise Ordinance;

WHEREAS, the City previously opted out of one of the class action suits presently pending in the 206th Judicial District Court of Hidalgo County styled *Cities of San Juan and Weslaco, Individually and on behalf of other similarly-situated entities v. Central Power & Light Company*, Cause Number C-2510-96-D (the "San Juan Lawsuit") and is therefore not represented in that case;

WHEREAS, a second class action lawsuit is pending in the 92nd Judicial District Court of Hidalgo County styled *City of Edinburg, on behalf of itself and all other similarly situated cities v. Central Power and Light Company*, Cause Number C-1149-01-A (the "Edinburg Lawsuit") and the City is a member of that class action;

WHEREAS, CPL made certain promises and/or pledges that it would extend any benefit awarded by a nonappealable final judgment or settlement in the San Juan Lawsuit to the City (the "Equal Treatment Promise");

WHEREAS, the City is aware of and has been kept apprised of developments, progress, and proposed settlement of the Edinburg Lawsuit;

WHEREAS, CPL continues to deny liability in both the San Juan Lawsuit and the Edinburg Lawsuit, but wishes now to settle and buy its peace from the Edinburg lawsuit;

WHEREAS, CPL has offered to pay the City of Bayside \$5,000.00 as a special one-time assessment of municipal franchise fees in consideration for the City's release and settlement of any claims arising from or related to the Franchise Ordinance and/or the Equal Treatment Promise;

WHEREAS, the City desires to settle and release any and all of the claims it has or may have against CPL arising from or related to the Franchise Ordinance and/or CPL's Equal Treatment Promise; and

WHEREAS, there is no requirement that the payment by CPL be passed through to CPL's ratepayers.

BE IT, THEREFORE, ORDAINED that the City accepts CPL's offer of payment of the one time assessment of municipal franchise fees in consideration for the City's release and settlement of any claims concerning the Franchise Ordinance and/or the Equal Treatment Promise.

IT IS FURTHER ORDAINED that the City releases and discharges CPL and each and every parent, subsidiary and affiliate company of CPL, together with each and every officer, director, agent, representative, employee and attorney working for CPL or each such company, from any and all claims, causes of action, liabilities, and damages, known or unknown, arising from or related to the Franchise Ordinance, including, but not limited to, the claims asserted or that could have been asserted in the Edinburg Lawsuit.

IT IS FURTHER ORDAINED that the City releases and discharges CPL and each and every parent, subsidiary and affiliate company of CPL, together with each and every officer, director, agent, representative, employee and attorney working for CPL or each such company, from any and all claims, causes of action, liabilities, and damages, known or unknown, arising from or related to CPL's Equal Treatment Promise including, but not limited to, the claims asserted or that could have been asserted in the Edinburg Lawsuit.

IT IS FURTHER ORDAINED that this Ordinance and the releases contained herein shall be binding independent of any court's treatment of class certification or settlement in the Edinburg Lawsuit.

IT IS FURTHER ORDAINED that until the kilowatt hour-based charge contained in § 33.008(b) of the Public Utility Regulatory Act becomes effective, CPL shall continue to pay franchise fees under the Franchise Ordinance based on its gross receipts from the sale of electricity, measured by kilowatt hours, within and for use within the corporate limits of the city.

IT IS FURTHER ORDAINED that the Mayor, City Manager, or other appropriate city official is authorized to cause a certified copy of this ordinance to be forwarded by certified mail to each of the following:

Benjamin L. Hall, III
The Hall Law Firm, L.L.P.
4310 Yoakum Blvd.
Houston, TX 77006

Juan Molina
Law Office of Juan Molina
710 S. Texas Blvd.
Weslaco, TX 78596

Robert L. Galligan
JONES GALLIGAN KEY & LOZANO, L.L.P.
2300 West Pike Blvd., Suite 300
P.O. Drawer 1247
Weslaco, TX 78596

DONE this 11 day of September, 2001.


Authorized City Official


Authorized City Legal Official