



# EPE Franchise Staff Presentation

January 21, 2020



# Current EPE Franchise

2005 - ORD No. 016090

EPE has a franchise to build and maintain facilities or transmission and distribution of electricity and broadband over power line (“BPL”) communication services on, over and under City:

- Streets
- Alleys
- Public ways
- Parks, and
- Public places for the use of the City and its residents and properties

EPE shall interfere as little as possible with public use of rights of way and with residents' private property.

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# EPE Franchise Term

Ordinance 16090:

- Effective from August 2, 2005 through July 31, 2030

Amended by Ordinance No. 18772, March 2018:

- Term extended through July 31, 2060

# EPE Franchise Fee to City

## **2005:**

- Street Rental Charge: 3.25% of the gross revenues of the Company and 4% of BPL - related gross revenues within the City were paid quarterly to the City

## **2010 Amendment:**

- Street Rental Charge increased by 0.75% to a total of 4% of EPE gross revenues and increased to 4.75% BPL revenues within the City;
  - 0.75% of the gross revenues, received as Street Rental Charge, was restricted as an allocation for Economic Development in the City ("Economic Development Restriction")

## **2018 Amendment:**

- Street Rental Charge increased to 5% of EPE gross revenue and increased to 5.75% BPL revenues within the City.
  - 1.75% of the gross revenues received as Street Rental Charge is allocated to the Economic Development Restriction

# EPE Franchise Assignment Application

- Ordinance 16090 requires consent for:
  - any merger or acquisition of the Company
  - sale of substantially all of the assets of the Company or
  - change in control of the Company, and
  - formal assignment is required subsequent to the merger or acquisition
- PUC Filing - Docket No. 49849: Agreement and Plan of Merger by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. dated as of June 1, 2019, and assigned
- EPE Franchise Assignment Application filed with the City on September 20, 2019
- Non-confidential information is currently published on City website



# Franchise Assignment Application Requirements

- Proposed Encroachment and Encroachment Routes
- Other Franchises and Certifications
- Corporate Information
- List of Creditors
- Legal and Regulatory Matters
- Operational Safety Measures
- Environmental Safety Measures
- Pole Attachment Contracts
- Equal Employment Opportunity Program
- Additional Information



## City's Conditions of Consent to Agreement

- Sun Jupiter, for so long as IIF US 2 owns Sun Jupiter:
  - will not relocate jobs outside of the EPE service territory and will not reduce EPE's workforce; and
  - will never move EPE's headquarters outside of the City of El Paso.
- Sun Jupiter will provide \$80,000,000 over 15 years for an Economic Development Fund to serve EPE's Texas service territory.
- Sun Jupiter will provide \$750,000 per year for 10 years for the City's general fund.
- Sun Jupiter will pledge up to \$1,000,000 over a period of five years to support enhancements to EPE's low income assistance programs.

## Proposed Amendments to Franchise

- Quarterly EPE-City meetings to ensure that EPE conducts appropriate maintenance of its street lights and rights of way
- EPE will coordinate with the City's Engineer:
  - Land under the control of the Company that the City desires to utilize for public recreation, exercise, relaxation, travel, or pleasure; and
  - Poles, lines, conduits, or other construction that the Company maintains that may need to be installed or relocated



# Renewable Generation Study

- EPE shall within 1 year, conduct a Renewable Generation Study
  - Costs and operational impacts;
  - Legislative or regulatory changes require to increase renewable generation, and how to implement such changes;
  - Potential voluntary renewable offerings to increase customer use;
  - Commitments that EPE can make to increase renewable generation; and
  - Grant opportunities to increase renewable generation.
- EPE will report to City Council two times per year on its progress towards increasing renewable generation in accordance with the findings of the study.

# Proposed Amendment to Compensation

- The Economic Development Restriction will be reduced as of July 29, 2030, to 1% of the gross revenues received as Street Rental Charge
- EPE will pay \$200,000 for the City's reasonable consultants and attorneys fees incurred due to the City's intervention in PUCT Docket No. 49849



## Future Purchase Options

- In the event Sun Jupiter considers selling 100% of its equity in EPE, it shall first notify the City, and the City will have the exclusive right:
  - for 120 days, to make an offer to purchase EPE, or
  - waive the right to purchase within that 120-day timeframe
- Thereafter, the City may make an offer to purchase EPE at any time, which may be in competition with other parties making offers to purchase EPE

## Experts

- January 6, 2020 - City Council directed City Attorney to retain outside counsel and any necessary consultants to review the Franchise.
- January 9, 2020 – Snapper Carr conferred with City Representatives
- January 10, 2020 – Kenneth Anderson declines
- January 16, 2020 – Snapper Carr conferred with Mayor and City Representatives

## Required Findings

City Code Sections 15.08.012(D) and 15.08.013(C):

- EPE is qualified to render its proposed services;
- EPE's is qualified to maintain the public rights-of-way adequately and safely;
- EPE is financially responsible and able to meet the terms of the franchise;
- The proposed use of the rights-of-way will not have a negative impact on the public's use of the rights-of-way; and
- There are no other relevant facts that would cause City Council to refuse consent

# Recommendation

Approve the Assignment Application