



FILED  
GARFIELD COUNTY, OKLA.

MAR 21 1997

SHARON MELROSE  
COURT CLERK  
BY *Lucy Ann Root*  
DEPUTY COURT CLERK

IN THE DISTRICT COURT OF GARFIELD COUNTY  
STATE OF OKLAHOMA

IN RE: )  
 )  
 INITIATIVE PETITION NUMBER \_\_\_\_\_ )  
 )  
 MUNICIPAL QUESTION NUMBER \_\_\_\_\_ )  
 OF THE CITY OF ENID, OKLAHOMA )  
 )  
 ENID CITIZENS AGAINST THE )  
 GOVERNMENT TAKEOVER COMMITTEE, )  
 an unincorporated association; )  
 RALPH J. EVANS, individually; )  
 JAMES H. GUNGOLL, individually )  
 and JOHN CROMWELL, individually, )  
 )  
 Protestants, )  
 )  
 v. )  
 )  
 LINDA S. PARKS, City Clerk of )  
 the City of Enid, Oklahoma, )  
 )  
 Respondent. )

Case No *97-256-02*

**PETITION FOR JUDICIAL REVIEW AND APPEAL OF CITY CLERK'S  
FINDING OF THE INSUFFICIENCY OF AN INITIATIVE PETITION**

Enid Citizens Against the Government Takeover Committee ("Citizens Committee"); Ralph J. Evans, individually; James H. Gungoll, individually and John Cromwell, individually, hereby petition this Court and appeal the finding of the City Clerk of Enid, Oklahoma, made on March 11, 1997, and published on March 14, 1997, that the initiative petition they have filed is legally insufficient.

**INTERESTED PARTIES**

1. Ralph J. Evans, James H. Gungoll and John Cromwell, Protestants, are citizens and registered voters of Enid, Oklahoma. They are qualified electors of Enid,

Oklahoma, as required by 11 O.S. § 15-104. Protestants Evans, Gungoll and Cromwell also are members of Citizens Committee, an unincorporated association of Enid residents who circulated Municipal Initiative Petition No. \_\_\_\_\_<sup>1</sup>. (A true and correct copy of the initiative petition, including the proposed franchise ordinance, is attached hereto as Exhibit "A.")

2. The City of Enid is an Oklahoma municipality operating under a charter form of government.

3. Respondent Linda S. Parks ("City Clerk") is the City Clerk of Enid, Oklahoma.

4. This Court has exclusive jurisdiction to hear protests and appeals of rulings by the City Clerk on the sufficiency of municipal initiative petitions. 11 O.S. § 15-104.

#### **SUBJECT OF INITIATIVE PETITION**

5. Initiative Petition Number \_\_\_\_\_ seeks to submit to the voters of Enid, Oklahoma, a proposed ordinance which would grant Oklahoma Gas and Electric Company ("OG&E") a new twenty-five (25) year franchise and would repeal the current ordinance which grants OG&E its existing franchise terminating in 1998.

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<sup>1</sup> In a letter to Protestants' counsel dated February 21, 1997, Respondent City Clerk Linda S. Parks advised that numbers are not assigned to initiative petitions filed in the City of Enid.

## **INITIATIVE PROCEDURE AND CLERK'S ALLEGED INSUFFICIENCIES**

6. On February 18, 1997, Protestants filed their proposed Initiative Petition, complete with a proposed ballot title, with the City Clerk pursuant to 11 O.S. §§ 15-103 and 15-105. On March 5, 1997, Protestants filed their completed petition containing 4,770 signatures. Only 1,552 were required to call for an election. On March 11, 1997, the City Clerk found that the petition was legally insufficient for the following stated reasons:

The initiative petition filed February 18, 1997 . . . has been ruled insufficient. The petition has the requisite number of signatures from qualified electors residing within the corporate limits of Enid. However, the petition is insufficient because it seeks to rescind an existing franchise between the City of Enid and OG&E which is not authorized by the Oklahoma Constitution, Article 18 §5. It is also insufficient because it seeks to repeal Ordinance 73-22 which is an administrative ordinance and the Oklahoma Supreme Court has held that administrative ordinances are not subject to the reserve powers of the people under the Oklahoma Constitution, Article 18 § 4.

The City Clerk caused notice of her findings to be published Friday, March 14, 1997. See Exhibit "B" attached hereto.

### **PROTESTANTS' ALLEGATIONS OF ERROR**

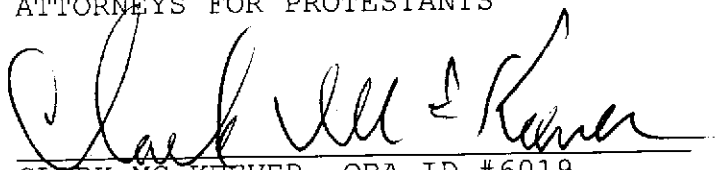
7. All of the City Clerk's claims of insufficiency are erroneous. The right to repeal an existing ordinance is specifically within the right of the people to enact ordinances through an initiative petition. A franchise granting an electric franchise is not an administrative

matter, but rather is a substantive legislative act specifically reserved to the citizens of a municipality by the Oklahoma Constitution. The City Clerk's alleged insufficiencies are frivolous. The actions of the City Clerk and other city officials involved in the initiative petition process are simply calculated to impede the Protestants' initiative petition drive and to delay a vote of the people as long as possible.

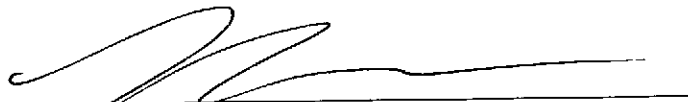
WHEREFORE, Protestants respectfully submit that the Initiative Petition filed with the City Clerk is legally sufficient. Protestants respectfully request the Court to find that the City Clerk erroneously found the Petition insufficient and order that the City of Enid place the initiated measure on the ballot.

DATED this 21st day of March, 1997.

ATTORNEYS FOR PROTESTANTS



CLARK MC KEEVER, OBA ID #6019  
Post Office Box 1026  
Enid, Oklahoma 73702-4137  
(405) 234-4133



LEE SLATER, OBA ID #012863  
Central Park Two, Suite 311  
515 Central Park Drive  
Oklahoma City, Oklahoma 73105  
(405) 524-8026

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 1997, a true and correct copy of the foregoing instrument was mailed, postage prepaid, to the following:

Linda S. Parks  
City Clerk  
City of Enid  
Post Office Box 1768  
Enid, Oklahoma 73702

Carol Lahman  
City Attorney  
City of Enid  
Post Office Box 1768  
Enid, Oklahoma 73702

A handwritten signature in black ink, appearing to be 'L. Parks', written in a cursive style.

Municipal Question No. \_\_\_\_\_

Initiative Petition No. \_\_\_\_\_

**“WARNING”**

“It is a felony for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter.”

**INITIATIVE PETITION**

To the Honorable Michael G. Cooper, Mayor of the City of Enid, Oklahoma:

We, the undersigned legal voters of the State of Oklahoma and the City of Enid, Oklahoma, respectfully order that the following proposed ordinance shall be submitted to the legal voters of the City of Enid, Oklahoma, for their approval or rejection at the regular general city election, to be held on the 2nd day of March, 1999, or at a special city election, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma and of the City of Enid, Oklahoma; my residence or post office are correctly written after my name. The time for filing this petition expires ninety days from February 18, 1997. The question we herewith submit to our fellow voters is:

Shall the following ordinance be approved?

- Yes — in favor of the proposition.
- No — against the proposition.

**TITLE**

AN ORDINANCE GRANTING TO OKLAHOMA GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE RIGHT TO PRODUCE, TRANSMIT AND DISTRIBUTE ELECTRICITY WITHIN THE CITY OF ENID, OKLAHOMA, AND TO SELL ELECTRICITY THEREIN, TO THE CITY, ITS INHABITANTS AND THE PUBLIC GENERALLY, AND THE RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF POLES, WIRES, CONDUITS AND OTHER FACILITIES AND EQUIPMENT IN, UPON, ACROSS, UNDER AND OVER THE STREETS, ALLEYS, PUBLIC GROUNDS AND OTHER PLACES IN THE CITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE APPROVAL AND ACCEPTANCE OF THE ORDINANCE; PROVIDING FOR OPERATION THAT WILL NOT UNDULY IMPEDE TRAFFIC; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR REGULATION OF SERVICE; PROVIDING FOR ASSIGNMENT; PROVIDING COMPENSATION TO THE CITY; PROVIDING FOR FREE SERVICE; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF ENID, OKLAHOMA:**

**SECTION 1.** The word “City” as hereinafter used shall mean and designate the City of Enid, Garfield County, Oklahoma, and the word “Company” as hereinafter used shall mean and designate the Oklahoma Gas and Electric Company, a corporation, sometimes operating under the trade name as OG&E Electric Services, organized and existing under and by virtue of the laws of the State of Oklahoma and its successors and assigns.

**SECTION 2.** (a) The City hereby grants to the Company, its successors and assigns the right, privilege and authority to produce, transmit, distribute and sell electricity within the corporate limits of the City for all purposes for which it may be used, to the City, its inhabitants and the public generally, and the right, privilege and authority to construct, maintain and operate a system of poles, wires, conduits, transformers, substations, and other facilities and equipment in, upon, across, under and over the streets, alleys, public grounds and other places in each and every part of said City for the purpose of producing, transmitting, distributing and selling electricity to the City, its inhabitants, and the public generally, provided the City shall have the absolute right to prohibit the Company’s use of areas other than streets, alleys, and private and public utility easements.

(b) The franchise hereby granted shall be effective from and after the date of approval of this Ordinance by the qualified electors of the City and acceptance by the Company, and shall remain in full force and effect for a period of twenty-five (25) years. Nothing in this Ordinance shall be construed to prevent the City from granting an electric franchise to any other person, firm, or corporation.

**SECTION 3.** The Company shall construct, operate and maintain its property in such a manner as will, consistent with necessity, not obstruct nor impede traffic unduly, and so as to minimize interference with or impairment of other authorized public uses. In case of any disturbance of pavement, sidewalk, driveway or other surface, the Company shall at its own cost and expense, and in the manner approved by the City, replace and restore the portion disturbed in as good a condition as before said work was commenced. Whenever by reason of establishing a grade, change of grade or alteration of any street, it shall be necessary to alter, change, adapt or conform the transmission lines or equipment of the Company, such alterations or changes of the transmission lines or equipment shall be made by the Company without any expense to the City.

**SECTION 4.** The Company shall defend and indemnify the City against all liability for injury to any person or property caused by the negligence of the Company in the construction, operation and maintenance of its property within the City.

**SECTION 5.** Electric service provided hereunder to the City, its inhabitants, and to the public generally, and rates charged therefor shall be in accordance with orders, rules and regulations of the Corporation Commission of the State of Oklahoma or other governmental authority having jurisdiction.

**SECTION 6.** The Company shall have the right to assign this franchise and the assignee by written acceptance thereof shall be bound by all the provisions hereof. An authenticated copy of such assignment and acceptance shall be filed with the Clerk of the City.

**SECTION 7.** (a) From and after the approval and acceptance of this franchise, and in consideration of the granting of this franchise, the Company agrees to pay and shall pay to the City an annual franchise tax in an amount equal to three percent (3%) of its gross revenues arising from the sale of electricity within the corporate limits of the City, such payment to be made on or before the 25th day of July of each year, after deducting therefrom any amount due the Company from the City.

In the event the Company in the future, under the terms of any franchise with any city or town in the State of Oklahoma, shall agree to and shall pay to such city or town as a franchise tax a percentage of gross receipts in excess of the three percent (3%) franchise tax set forth in this section, the Company shall notify the City in writing within 30 days of the increase in the percentage of franchise tax for said city or town and the City shall have the option of increasing the franchise tax to that percentage, by public vote of the Mayor and Board of Commissioners, and said increase shall become effective for the City within 30 days from the receipt of the City's option by the Company.

(b) The Company shall abide by any order, rule or regulation of the Corporation Commission of the State of Oklahoma requiring the listing separately of all or any portion of such franchise tax on electric bills to customers.

(c) Such franchise taxes paid by the Company to the City shall be in lieu of all other franchise, excise, license, occupation, privilege, inspection, permit, or other fees, taxes or assessments, except ad valorem taxes.

**SECTION 8.** The Company shall furnish to the City without charge each fiscal year during the term hereof electric current to be used exclusively by the City for operation of traffic signal lights and buildings occupied and operated by the City for municipal purposes, to be applied by the Company as a credit to billings to the City, provided that such electric current shall not exceed one-half of one percent (0.5%) of the kilowatt-hours sold by the Company to customers within the corporate limits of the City during the preceding fiscal year.

**SECTION 9.** In case the franchise hereby granted is approved at said election, the Company shall, within thirty (30) days from the date of such approval, file with the Clerk of the City, in writing, its acceptance. In the event the Company fails to accept within the said period, such failure shall be deemed a rejection of the franchise.

**SECTION 10.** All ordinances, or parts of ordinances, in conflict herewith, including but not limited to Ordinance No. 73-22, are hereby repealed.

Names and Addresses of Proponents:

- |    |                  |                  |                |
|----|------------------|------------------|----------------|
| 1. | Ralph J. Evans   | 2905 W. Broadway | Enid, OK 73703 |
| 2. | James H. Gungoll | 1611 Osage       | Enid, OK 73703 |
| 3. | John Cromwell    | 1409 Ramona      | Enid, OK 73703 |

**SIGNATURES**

The gist of the proposition is as follows:

Shall an ordinance granting a franchise to the Oklahoma Gas and Electric Company, a corporation, its successors and assigns, giving it the right to produce, transmit and distribute electricity within the City of Enid, Oklahoma, and to sell electricity therein, to the City, its inhabitants and the public generally, and the right to construct, maintain and operate a system of poles, wires, conduits and other facilities and equipment in, upon, across, under and over the streets, alleys, public grounds and other places in the City for a period of twenty-five (25) years from the approval and acceptance of the ordinance; providing for operation that will not unduly impede traffic; providing for indemnification; providing for regulation of service; providing for assignment; providing compensation to the City; providing for free service; and providing for repeal of any previous ordinance in conflict herewith be approved?

A "yes" vote is a vote in favor of this measure. A "no" vote is a vote against this measure.

1. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
2. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
3. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
4. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
5. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
6. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
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7. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
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15. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
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18. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
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19. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County
20. \_\_\_\_\_, Enid, OK \_\_\_\_\_ Garfield  
Signature of Legal Voter                      Residence                      City                      Zip                      County

**INSTRUCTIONS TO CIRCULATORS:** Read the affidavit on reverse side of this page and observe its requirements. Names should be signed the same way voter is registered. Husbands may not sign wives' names, and vice versa. Circulators must witness all signatures. Voters should sign only on this page, not on the reverse side. You should type or print the voter's name in the appropriate space on the reverse side of this page. When all signatures have been obtained, return this petition to \_\_\_\_\_ at \_\_\_\_\_ . Even if only one signature has been obtained, return this petition. If you have questions, call \_\_\_\_\_.



AFFIDAVIT

STATE OF OKLAHOMA )
) ss.
COUNTY OF GARFIELD )

I, \_\_\_\_\_, being first duly sworn say: That I am a qualified elector of the State of Oklahoma and that

- 1. \_\_\_\_\_ 11. \_\_\_\_\_
2. \_\_\_\_\_ 12. \_\_\_\_\_
3. \_\_\_\_\_ 13. \_\_\_\_\_
4. \_\_\_\_\_ 14. \_\_\_\_\_
5. \_\_\_\_\_ 15. \_\_\_\_\_
6. \_\_\_\_\_ 16. \_\_\_\_\_
7. \_\_\_\_\_ 17. \_\_\_\_\_
8. \_\_\_\_\_ 18. \_\_\_\_\_
9. \_\_\_\_\_ 19. \_\_\_\_\_
10. \_\_\_\_\_ 20. \_\_\_\_\_

signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, post office address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and of the City of Enid, Oklahoma.

\_\_\_\_\_  
Circulator's Signature

\_\_\_\_\_  
Post Office Address

\_\_\_\_\_  
City Zip Code

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Post Office Address

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
City Zip Code

Published in the Enid News & Eagle, March 14, 1997 (903)  
**NOTICE OF INSUFFICIENCY OF PETITION FILED**  
**ON FEBRUARY 18, 1997**

The initiative petition filed February 18, 1997, REQUESTING AN ELECTION ON A NEW 25 YEAR FRANCHISE WITH OG&E has been ruled insufficient. The petition has the requisite number of signatures from qualified electors residing within the corporate limits of Enid. However, the petition is insufficient because it seeks to rescind an existing franchise between the City of Enid and OG&E which is not authorized by the Oklahoma Constitution, Article 18 §5. It is also insufficient because it seeks to repeal Ordinance 73-22 which is an administrative ordinance and the Oklahoma Supreme Court has held that administrative ordinances are not subject to the reserve powers of the people under the Oklahoma Constitution, Article 18 §4.

Any qualified elector of the municipality may file a protest to the petition or an objection to the court by filing in Garfield County District Court said protest within 10 days from the date this notice appears in the newspaper pursuant to 11 Okla. Stat. § 15-104.  
Dated this 11th day of March, 1997.

/s/ Linda S. Parks  
Linda Parks, City Clerk