

ORDINANCE NO. 421

AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A CORPORATION, A NONEXCLUSIVE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY FOR ALL PUBLIC AND PRIVATE USES.

WHEREAS, pursuant to applicable law, the City of Beulah has the power to grant a non-exclusive franchise for a term of no more than twenty years;

WHEREAS, pursuant to applicable law, those that provide electrical service within city limits shall do so pursuant to a franchise issued by the City;

WHEREAS, both Roughrider Electric Cooperative Inc. and Montana-Dakota Utilities Co. currently serve customers within the City of Beulah;

WHEREAS, Roughrider Electric Cooperative Inc. and Montana-Dakota Utilities Co. have entered into a Service Area Agreement which allocates service territories within the city limits of the City of Beulah;

WHEREAS, due to the allocation of service territory within the city limits of the City of Beulah pursuant to the aforementioned Service Area Agreement, and to maintain appropriate procedures and controls over electric service providers, it is necessary to enter into a formal franchise with Montana-Dakota Utilities Co.

BE IT ORDAINED BY THE BOARD OF CITY COUNCIL OF THE CITY OF BEULAH, NORTH DAKOTA, AS FOLLOWS:

Section 1. Definitions: As used herein, the following words and terms are defined as follows:

- a. "City" means the City of Beulah, North Dakota.
- b. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
- c. "Grantee" means Montana-Dakota Utilities Co.
- d. Any reference to either City or Franchise includes their respective successors and assigns.

Section 2. Grant of Authority: The City grants to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, and in and under the same, an electric distribution system for transmitting and distributing electric energy for all public and private uses.

To encourage harmony and operational efficiency in the provision of electric

distribution service in the City, to promote safety and discourage unreasonable duplication of electric facilities, to assure adequate and reliable service for all consumers within the City, and provide franchise grantees with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the City during the terms of this Franchise, the authority granted by this Franchise to Grantee is limited to the use of the City's streets, alleys and public grounds for the purpose of distributing electric energy for public and private use within the service areas and to the service locations of the Grantee as designated and agreed to in the Service Area Agreement executed by Roughrider Electric Cooperative, Inc. and Grantee and attached as Exhibit A to this Ordinance, including any amendments or modifications to the Service Area Agreement as agreed and approved pursuant to the terms of the Service Area Agreement. The Grantee shall have all the rights, privileges, and obligations to provide electric distribution service within such service areas and to such service locations as stated in the Service Area Agreement. This limitation shall not restrict the Grantee's right to occupy and use the streets, alleys and public grounds of the City anywhere within the City to construct, operate, and maintain transmission and distribution line facilities for the purpose of providing adequate electric service within the service areas and to the service locations of the Grantee under the Service Area Agreement as provided in paragraph 11 of such Agreement.

The rights herein granted to Grantee shall further be subject to all valid laws, rules and regulations now or hereafter adopted and promulgated by any State or Federal authority having jurisdiction over Grantee and which may expand or limit Grantee's right to serve pursuant to this Franchise.

Section 3. Grantee's Obligations: Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use during twenty-four (24) hours of each day at such reasonable rates as may be promulgated by Grantee and as the same may be regulated by the United States of America, its agencies, or by the State of North Dakota or its agencies.

Section 4. Non-Exclusive Grant: This Franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys, and public grounds of the City for like purposes.

Section 5. Compliance with Laws and Ordinances: Grantee shall at all times during the term of this Franchise comply with all applicable laws and ordinances of the City.

Section 6. Conditions on Street Occupancy:

a. During the construction, maintenance or enlargement of any part of said system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work. All signing and traffic regulation shall conform to the Manual on Uniform Traffic Control Devices (MUTCD).

b. The City reserves the right to make and adopt, and the rights and privileges

hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the Franchise hereby granted.

c. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the Engineering Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Prior to the disturbance of any street, sidewalk, alley, public way or paved area, Grantee shall provide written notice to the City at least two (2) days prior to said disturbance.

d. Grantee, at its expense, shall protect, support, temporarily disconnect, relocate along, under, or over any street, alley, or public place, or remove from any street, alley, or public place, any equipment or facilities when required by the City by reason of traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in as governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.

e. Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary wire changes.

Section 7. Reservation of Rights: The City reserves any right it may have, under its police power or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power.

Section 8. Franchise Fee: The City hereby reserves the right to implement, by passage of a separate ordinance, a franchise fee to be collected and remitted by Grantee to the City. Said franchise fee will be in accordance with state law and regulations. In the event such a franchise fee is implemented, the Grantee agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments. The Company shall have sixty (60) days from passage of the ordinance to implement collection of the franchise fee, however, said franchise fee shall be effective upon date of final passage of the ordinance.

Section 9. Maintenance. Grantee shall be responsible for the cost and performance of any and all maintenance or repairs to their distribution system.

Section 10. Notice. Grantee shall be responsible for notifying the City within thirty (30) days of Grantee receiving notice of any planned or requested repairs, new projects, new structures, new infrastructure, or maintenance within the City of Beulah. Grantee shall notify the City of the location of the project, and the estimated cost of the project. The intent of this section is to give the City advance notice of new projects that the City will have to be involved in with regards to financing, or that the City will bear the cost of. (Ex. If the City needs to account for payment for electrical items in a new development, the City needs to know in advance for the purposes of special assessments.)

Section 11. Notice of Rate Changes. Grantee shall notify the City of any rate changes as approved by the North Dakota Public Service Commission in a general rate case, at least thirty (30) days prior to the effective date of the rate change.

Section 12. Tree-trimming. Unless provided in any permit or regulation of the City, Grantee may trim trees and shrubs in and over the streets, alleys, and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the City harmless from any liability arising therefrom.

Section 13. Assignment: Grantee may assign this Franchise to another party or corporation, subject to all obligations of the Grantee hereunder, and shall provide notice to the City of any such assignment.

Section 14. Indemnification: Grantee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution systems, and its use of the streets, alleys, and public grounds of the City.

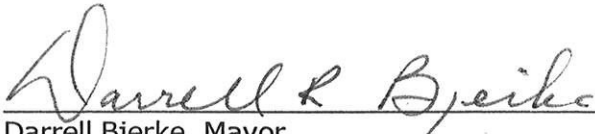
Section 15. Acceptance: Within thirty (30) days after passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the City, its written acceptance of this Franchise.

Section 16. Term: This Franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

Section 17. Repeal of Conflicting Ordinances: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith ARE HEREBY REPEALED.

Section 18. Effective Date: THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER FINAL PASSAGE.

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Darrell Björke, Mayor

ATTEST:


Heather Ferebee, City Auditor

First Reading: February 6, 2017

Second Reading: April 3, 2017

Final Passage: April 3, 2017