

CHARTER TOWNSHIP OF KALAMAZOO

ORDINANCE NO. 593

CONSUMERS ENERGY COMPANY ELECTRIC FRANCHISE ORDINANCE

ADOPTED: January 22, 2018

EFFECTIVE: February , 2018.

An Ordinance granting to CONSUMERS ENERGY COMPANY, its successors and assigns, a non-exclusive right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to transact a local electric business in the CHARTER TOWNSHIP OF KALAMAZOO, KALAMAZOO COUNTY, MICHIGAN, for a period of 10 years.

CHARTER TOWNSHIP OF KALAMAZOO

KALAMAZOO COUNTY, MICHIGAN

ORDAINS:

SECTION I

GRANT OF NON-EXCLUSIVE RIGHTS

A. Grant and Term. The Charter Township of Kalamazoo, Kalamazoo County, Michigan (“Township”), grants to Consumers Energy Company (“Grantee”), its successors and assigns, subject to the terms and conditions set forth below, the non-exclusive right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter "Electric System") on, along, across, over and under the public highways, streets, alleys, bridges, waterways, and other public places (hereinafter also referred to as “Public Ways”) and to transact a local electric business, within the Township for a period of ten (10) years.

B. Consideration. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

C. Extensions. Grantee shall construct and extend its Electric System within the Township, and shall furnish electric service to applicants residing therein in accordance with applicable laws, rules and regulations.

SECTION II
USE OF PUBLIC RIGHTS-OF-WAY BY GRANTEE

A. No Burden on Public Ways. Grantee and its contractors, subcontractors and the Grantee's Electric System shall not unduly burden or interfere with the present or future use of any of the Public Ways within the Township. Grantee shall install and maintain its Electric System so as to cause minimum interference with the use of the Public Ways. No Public Way shall be obstructed longer than necessary during the work of construction or repair to the Electric System. Grantee's cable, wires, structures and equipment shall be suspended or buried so as to not endanger or injure persons or property in the Public Ways.

B. Restoration of Public Ways. Grantee and its contractors and subcontractors shall within a reasonable time restore, at Grantee's sole cost and expense, any portion of the Public Ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Electric System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractors or subcontractors fail to make such repair within a reasonable time specified by the Township, the Township shall, among other remedies, be entitled to have the repair completed and Grantee shall pay the costs for such repair.

C. Easements. Any easements over or under property owned by the Township in fee shall be separately negotiated with the Township.

D. Compliance with Laws. Grantee shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding its Electric System, whether federal, state or local, now in force or which hereafter may be promulgated. Nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under state or federal law.

E. Tree Clearing. Grantee may clear trees upon and overhanging the Public Ways so as to prevent trees from coming into contact with the Electric System in accordance with the tree clearing standards of Grantee and the applicable requirements of the MPSC. Except in an emergency, no clearing shall be done in the Public Ways without previously informing the Township.

F. Street Vacation. Grantee accrues no rights under this franchise which would impair the rights of the Township to vacate or consent to the vacation of a Public Way.

G. Company Representative. The Grantee shall designate an employee to act as a representative to respond to inquiries from the Township regarding the administration of this franchise and the obligations and services herein. The Grantee shall provide the Township with the person's name and telephone number.

H. Notice. Before commencing the construction or repair work on its Electric System which will require excavation in or the closing of any street, alley, bridge, waterway or other public place, the Grantee shall provide the Township with notice, including a description of the work to

be performed, in advance of such work. This notice requirement shall not apply to the installation of electric services on privately owned property nor to any other work performed on such privately owned property. Nothing herein shall preclude the Grantee from immediately commencing construction or repair work within any street, alley, bridge, waterway or other public place when deemed necessary due to an emergency or service restoration, and in such case, the Grantee shall notify the Township of such work if reasonably practical.

SECTION III **HOLD HARMLESS**

The Grantee shall at all times keep and save the Township free and harmless from all loss, costs and expense to which it may become subject by reason of the construction, maintenance and operation of the structures and equipment hereby authorized. In case any action is commenced against the Township on account of the permission herein granted, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss, cost and damage arising out of said permission. Providing further, that this hold harmless agreement shall not apply to any loss, cost, damage or claims arising solely out of the negligence of the Township, its employees or its contractors. Furthermore, in the event that any loss, cost, damage or claims arise out of the joint negligence of the Township, its employees or its contractors, this hold harmless agreement shall not apply to the proportional extent of the negligence of the Township, its employees or its contractors. Notwithstanding any provision contained in this Ordinance, nothing in this Ordinance shall impair any liability protection afforded the Township pursuant to law.

SECTION IV **REVOCATION**

The franchise granted by this Ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

SECTION V **RATES**

Grantee shall be entitled to charge the inhabitants of the Township for electricity furnished at the rates approved by the Michigan Public Service Commission, to the extent it or its successors, have authority and jurisdiction to fix and regulate electric rates and promulgate rules regulating such service in the Township. Such rates and rules shall be subject to review at any time upon petition being made by either the Township acting through the Township Board or by Grantee.

SECTION VI **TOWNSHIP JURISDICTION**

Said Grantee shall be and remain subject to all ordinances, rules and regulations of the Township now in effect, or which might subsequently be adopted for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided however, that

nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under state or federal law.

SECTION VII
MICHIGAN PUBLIC SERVICE COMMISSION

Grantee shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to electric service by the Michigan Public Service Commission, or its successor bodies to the extent such jurisdiction applies.

SECTION VIII
ASSIGNMENT OF FRANCHISE

Grantee shall not assign this Franchise to any other person, firm or corporation without the prior written approval of the Township Board. The Township shall not unreasonably withhold its consent to an assignment if the Assignee is financially able to carry out the Grantee's obligations under this Franchise. The assignment of this Franchise to a subsidiary, division, or affiliated corporation of Grantee or its parent corporation shall not be considered an assignment requiring the consent of the Township Board. Grantee shall reimburse the Township for reasonable actual costs incurred in the review of a request by Grantee for approval.

SECTION IX
SEVERABILITY

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION X
REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION XI
EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption by the Township Board and publication thereof, provided, however, it shall cease and be of no effect after thirty (30) days from its adoption unless and until within said period Grantee files an acceptance in writing with the Township Clerk.

We certify that the foregoing Franchise Ordinance was duly enacted by the Township Board of the CHARTER TOWNSHIP OF KALAMAZOO, KALAMAZOO COUNTY, MICHIGAN, on the _____ day of _____, 2018.

Donald Martin, Township Supervisor

Attest:

Mark E. Miller, Township Clerk