

**NOTICE OF ADOPTION
AN ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY ADDING ARTICLE 10 OF CHAPTER 14
BUSINESSES**

THE CITY OF PORTAGE ORDAINS:

That Chapter 14 shall be amended to add the following:

ARTICLE 10. CONSUMERS ENERGY COMPANY ELECTRIC FRANCHISE.

Section 14-192. Grant; term.

The City of Portage, Kalamazoo County, Michigan, hereby grants the right, power and authority to Consumers Energy Company, a Michigan corporation, its successors and assigns, hereinafter called the "grantee" 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, for the purpose of transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the City of Portage, Kalamazoo County, Michigan for a period of 30 years. Said local business to be limited to the territory grantee is permitted to operate within in accordance with Michigan law and the Michigan Public Service Commission.

Section 14-193. Consideration.

In consideration of the rights, powers and authority hereby granted, said grantee shall faithfully perform all things required by the terms hereof.

Section 14-194. Conditions.

a. Except in the case of an emergency, before any installation or work in a public right-of-way is commenced, grantee must secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the city or other governmental entity as is required by law. No permit shall be issued, unless the location and depth of the grantee's facilities within the public way of way are identified at the time of the application.

b. Before commencing the construction or erection of poles, wires, transformers and other similar or related equipment which will require excavation in or the closing of any street, alley, bridge, waterway or other public place the Grantee shall provide the city with notice, including a description of the work to be performed, at least fourteen (14) days 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 to prevent danger to life or property, and in such case, the Grantee shall notify the city of such work as soon as reasonably practical.

c. The grantee and its contractors and subcontractors shall not unduly burden or interfere with the present or future use of any of the highways, streets, alleys, bridges, waterways and other public places (hereinafter called "right-of-ways") within the city. After the construction or erection of poles, wires, transformers and other similar or related equipment which will require excavation in any street, alley, bridge, waterway or other public place, the grantee and its contractors and subcontractors shall at the grantee's sole cost and expense, repair the same and leave it in as good condition as before the opening or excavation was made. The grantee and its contractors and subcontractors shall complete such repair within a reasonable time as specified on the permit issued by the city; provided, however, that grantee shall have a reasonable amount of additional time to make such repairs to the extent repairs are delayed by events beyond grantee's reasonable control. In the event that the grantee and its contractors and subcontractors fail to make such repairs within the time specified above, the city shall be entitled to complete the repair and the grantee shall pay the actual costs of the city for such repair. The grantee has the right to trim and remove trees that are located within the public right-of-way, if necessary in the conducting of such business, subject, however, to the supervision of the city's department of transportation and utilities.

d. The grantee and its contractors and subcontractors shall protect, support, disconnect, relocate in or remove from the public right-of-ways, any of its facilities when required to do so by the city, due to street or other public excavation, construction, repair, grading, regrading; the installation of sewers, drains, water pipes, or municipally-owned facilities of any kind; the construction, vacation or relocation of streets pursuant to the city's discharge of a governmental function; or other public improvements by the city; provided however, that nothing herein shall be construed as a waiver by Grantee of its existing or future rights under State or Federal law..

e. Grantee's representative shall attend, when requested by the city, preconstruction meetings conducted by the city in connection with any public improvement projects in the public right-of-ways in the city, which may affect any of grantee's facilities. Grantee's representative shall notify the city and its contractors of any conditions of grantee's facilities which may affect the project and grantee shall make provisions, as necessary, to prevent its facilities (or their condition) from delaying or otherwise interfering with the project.

f. Any easements over or under private property, necessary for the construction, repair or maintenance of grantee's facilities, shall be arranged and paid for by grantee. Any easement over or under property owned by the city, other than the public right-of-ways, shall be separately negotiated with the city. The city shall be under no obligation to grant such easements. The foregoing shall not be construed to negate or limit, in any way, grantee's right or ability to exercise its power of eminent domain, pursuant to state law as it may presently exist, or may hereafter be amended.

g. The grantee and its contractors and subcontractors shall comply with all zoning and land use regulations, as may now exist or may hereafter be amended.

h. Grantee shall keep reasonably accurate, complete and current maps and records of its facilities. If the city or its contractors are working the public right-of-ways in the vicinity of grantee's facilities, grantee agrees, if requested by the city, to furnish maps and/or records of the specific area requested. Nothing herein shall be construed to modify the requirements of or the parties obligations under the Miss Dig Act (MCL 460.701 et seq.) as it now exists or may hereafter be amended.

Section 14-195. Hold Harmless.

The grantee and its contractors and subcontractors shall use due care at all times in exercising the privileges herein contained. The grantee shall hold harmless, defend and indemnify the city and its officers, agents, and employees from and against all costs, claims, damages, liabilities, expenses, judgments and proceedings of whatever nature including, without limitation, reasonable attorney's fees arising from the grantee's exercise of its rights pursuant to this ordinance (whether by the grantee or the grantee's contractor or subcontractors). Notwithstanding the foregoing, grantee shall not be required to hold harmless, defend and indemnify the city and its officers, agents, and employees from and against any costs, claims, damages, liabilities, expenses, judgments and proceedings of whatever nature to the extent arising out of the negligence or intentional misconduct of the city or its officers, agents, employees or contractors.

Section 14-196. Franchise not exclusive.

The rights, power and authority herein granted are not exclusive.

Section 14-197. Revocation.

The franchise granted by this ordinance is subject to revocation at will by the grantor or the grantee upon 60 days written notice.

Section 14-198. Michigan Public Service Commission, jurisdiction.

If required by applicable law, grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, or any other state or federal agency, applicable to electric service in said city.

Section 14-199. No liability.

a. The city, its agents, employees and contractors, are not liable to grantee or to grantee's customers for any interference with or disruption in the operation of grantee's electrical system, or for any damages arising out of grantee's use of the public rights-of-way except due to the sole negligence or willful misconduct of the city, its agents, employees or contractors.

Section 14-200. No waiver.

Nothing herein contained constitutes, nor should the same be construed as, a waiver of any governmental immunity otherwise provided to the city, its agents, employees, officers, or representatives as provided for under common law or statute.

Section 14-201. No assignment.

Grantee may not assign this agreement to any other person, firm or corporation without the prior written approval of the city except that assignment to a corporate affiliate of grantee, which corporate affiliate is controlled by grantee, will not be considered an assignment for the purposes of this agreement. The city may not unreasonably withhold its consent to an assignment if the assignee is financially able to carry out the grantee's obligations under this agreement.

Section 14-202. Compliance with laws.

Grantee and its contractors and subcontractors shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of the grantee's electrical system, whether federal, state or local, now in force or which are later promulgated. Further, grantee shall be subject to the provisions of the City of Portage Charter, Chapter 13, Utility Franchises and Municipal Utilities; provided however, that nothing herein shall be construed as a waiver by Grantee of its existing or future rights under State or Federal law.

Section 14.203. Effective Date.

This ordinance shall take effect fifteen (15) days after the date of publication thereof; provided, however, it shall cease and be of no effect after 60 days from its adoption unless within said period the grantee shall accept the same in writing filed with the city clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said city and said grantee.