

Ordinance No. 46

AN ORDINANCE GRANTING A REVOKABLE FRANCHISE TO DTE ENERGY MARKETING, INC. TO CONDUCT AN ELECTRIC BUSINESS WITHIN THE CITY OF GRANT.

This franchise ordinance is made and entered into this 26th day of July, 2000, by and between the Incorporated City of Grant, by its Mayor and City Manager, and DTE Energy Marketing.

WHEREAS, DTE Energy Marketing, a Michigan corporation, seeks a nonexclusive public utility franchise to conduct a local electric power business in the City of Grant, Michigan, and to participate in the Michigan Public Service Commission Open Access Program; and

WHEREAS, the City of Grant, Newaygo County, Michigan is empowered, pursuant to the Michigan Constitution of 1963, and City Charter, Chapter XII Sections 12.1 thru 12.11, to grant public utility franchises:

NOW THEREFORE, the City of Grant, Michigan hereby grants DTE Energy Marketing a nonexclusive revocable franchise as follows:

Section 1. Grant of Electric Franchise Rights.

The City of Grant grants permission to DTE Energy Marketing (Grantee) subject to the terms and conditions set forth below, the right and authority to conduct an electric power business in the City. Grantee shall supply electric customers in the City with power delivered to the Consumers Power transmission system at its various interconnection points by others supplying the Grantee with wholesale power. Consumers Power will deliver the Grantee's power to customers utilizing Consumers Power's existing power lines and equipment which Consumers Power shall be solely responsible for installing and maintaining. The terms and conditions of such electric power supply shall be set by contract between Grantee and its customers, subject to regulations by the Michigan Public Service Commission (MPSC).

A. Term.

The term of this franchise shall be for ten (10) years.

B. Use of Public Ways

Grantee shall do no injury to the streets, highways or alleys nor shall it disturb any trees or interfere with gas lines, telecommunication cables or sewer lines anywhere in the City. The Grantee may not use the public ways of the City to construct power lines or install and maintain any other electrical equipment and the Grantee shall not dig on the public way or in any way disturb or alter the public way, unless otherwise agreed through the right-of-way permit process. All local delivery of electric power to the Grantee's customers shall utilize existing and future Consumers Power lines and equipment which shall be maintained by Consumers Power. If the City in its reasonable judgement determines that any portion of the electric system, equipment or appurtenances is an undue burden, the Grantee at its

the Grantee at its expense shall modify its system or take such other actions as City may determine are in the public interests to remove or alleviate the burden, and the Grantee shall do so within the time period established by the City.

Section 2. Insurance and Indemnity.

- A. Insurance. Grantee shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its exercise of the rights granted by this agreement: Comprehensive General Liability, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for X, C, and U hazards, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

The City shall be named as an additional insured on all such policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the City. Grantee shall provide the City with a certificate of insurance evidencing such coverage and maintain a current certificate on file with the City.

- B. Indemnification. Grantee shall, at its sole cost and expense, indemnify and hold harmless the City, and all associated, affiliated, allied and subsidiary entities of City now existing or hereinafter (hereinafter referred to as "indemnities") created, and their respective officers, boards, commissions, employees and agents, attorneys and contractors from and against; any and all liability, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including reasonable fees and expenses of attorneys, expert witnesses, and consultants), which may be imposed upon, incurred by or asserted against by reason of any act or omission by the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the conduct of its electric power business in the City or Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- C. Notice. Cooperation and Expenses. City shall give Grantee prompt notice of the making of any claim or the commencement of any action, suit or actions, suits, or proceedings. These expenses shall include attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the City Attorney, and the actual expenses of City's agents, employees or expert witnesses, and disbursements and liability assumed by City in connection with such suits, actions or proceedings.

Section 3. Franchise Not Exclusive.

The rights, powers and authority granted herein are not exclusive, and the City may grant similar rights and powers to any other person or entity with impunity from Grantee.

Section 4. Revocation/Transfer

- A. Revocation. The franchise granted is subject to revocation at will by either DTE Energy or the City Council.
- B. Transfer. Except in the event of a corporate reorganization on the part of the Grantee, Grantee shall not transfer, sell or assign the rights granted to it by this agreement, in whole or in part, without the express written consent of the City. Upon receiving adequate assurance of continuous service and financial standing of a proposed purchaser, transferee or assignee, City's consent shall not be unreasonably withheld.

Section 5. Michigan Public Service Commission.

- A. Jurisdiction. The Grantee shall, as to all other conditions and elements of service not addressed or fixed by this agreement, remain subject to the rules and regulations applicable to electric power supply and electric service marketers by the Michigan Public remain subject to the rules and regulations applicable to electric supply as provided for by the Michigan Public Service Commission (MPSC).
- B. Filing. Grantee shall provide the City with copies of all documents which the Grantee sends to the MPSC with respect to the City of Grant and copies of all orders, decisions or correspondence Grantee receives from MPSC. The Grantee shall permit the City inspection and examination of all records it is required to maintain or file under MPSC rules and regulations.
- C. Grantee's Rates. The Grantee shall be entitled to charge the inhabitants of the City for electric energy furnished therein the rates as approved by the Michigan Public Service Commission (MPSC), to which commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regulating such service in the City are hereby granted for the term of this franchise electric rates and rule in accordance with Commission filing requirements.

Section 6. Sales and Assignment.

Except in the event of a corporate reorganization on the part of the Grantee, the Grantee may not sell, assign, sublet, or allow another to use the same, unless the City of Grant acting by its City Council gives its written consent.

Section 7. Non-Discrimination.

Except as permitted by the Michigan Public Service Commission, Grantee shall not grant any preference to or discriminate against any residential electrical customer within the

City. While Grantee is not obligated by this ordinance to serve any customer, it shall not discriminate among residential customers on the basis of race, color, sex, age, religion, or national origin.

Section 8. Effective Date.

This ordinance shall take effect within one year after the adoption of this ordinance, except in the case of grants to take effect at the end of an existing franchise. The effective date of this ordinance shall be July 26, 2000, upon publication.

Section 9. Consideration.

In consideration of the City granting this ordinance, the Grantee agrees to reimburse the City for fixed and variable administration costs incurred by the City for granting and monitoring revocable franchise, and for costs of publication, One Thousand Five Hundred Dollars (\$1,500.00) payable within thirty (30) days of the effective date of this Ordinance and shall faithfully perform all things required by the terms of this Ordinance.

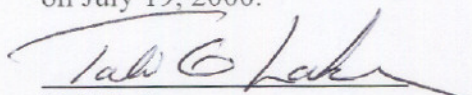
Section 10. Compliance with Laws.

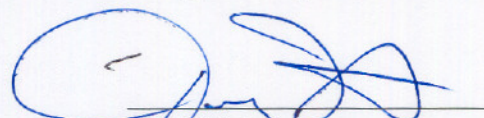
The Grantee agrees to comply with the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric service in the City. Grantee shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of the Grantee's electrical system, whether federal, state or local, now in force or which hereafter may be promulgated. Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, commissions, or boards of the City or other governmental entity as required by law before any installation is commenced..

Section 11. Charter/Preemption.

It shall be the responsibility of DTE Energy Marketing, its successors and assigns, in the operation of the franchise, is expressly subject to the terms and provisions of the Charter Of the City of Grant and said Charter terms and provisions shall control unless preempted by other law, statute or regulation.

Ordinance #46, in accordance with the City Charter was first read at the June 19, 2000 regular City Commission meeting; Published in the July 26, 2000 edition of the Times Indicator; And passed by the City Commission at the regular City Commission meeting on July 19, 2000.


Tobi Lake
City Manager/Clerk


Terry Fett
Mayor