

ORDINANCE NO. 140

AN ORDINANCE GRANTING A FRANCHISE TO K.C. ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE TOWN OF ARRIBA, INCORPORATED, AND TO USE THE STREETS OR ALLEYS OF THE TOWN FOR SUCH PURPOSES

WHEREAS, K.C. Electric Association, a cooperative corporation, organized and existing under the laws of the State of Colorado, hereinafter termed the "Cooperative" has heretofore and is now operating and maintaining an electric system within the Town of Arriba, Incorporated, hereinafter termed the "Town" under an electric franchise and subsequently assigned to this Cooperative; and

WHEREAS, the said Cooperative has made or may make extensive additions, alterations and improvements in the said system for the maintenance of the electric lines and facilities within said Town; and

WHEREAS, it would be to the mutual benefit of the Town and the Cooperative to have the electric system of the Town maintained and would further be to the mutual benefit of the Town and the Cooperative for the Board of Trustees to grant a franchise to the Cooperative to construct, operate and maintain an electric system on terms that will assure the full control and use of the streets or alleys to the public, the safety of the persons and property of the public so far as the maintenance of the system is concerned and the continuity of service upon the same classifications of service in the Town as the classifications of service in other towns served by the Cooperative and upon the same rates and charges for electric service to consumers and users in the Town in each classification as the rates and charges of the Cooperative in other towns of the same class served by it; and

WHEREAS, the Cooperative has duly published its intention of applying for a franchise as provided by law,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, INCORPORATED, STATE OF COLORADO:

That K.C. Electric Association, its successors and assigns, is hereby granted a franchise:

(a) To construct, operate and maintain an electric system with all fixtures and appurtenances necessary or advisable for the proper operation and maintenance of said system within the limits of the Town in order to supply power for public and private use within the Town and for the transmission of electricity through and beyond the Town,

(b) To use the streets and alleys and public places of the Town for such purposes; and

(c) To cut and trim all trees and shrubbery insofar as may be necessary to keep them clear of the poles and wires of the electric system and to make all necessary excavation in the public streets, roads, alleys or other public thoroughfares;

(d) To furnish electric energy for public and private use within the Town and to transmit electricity through and beyond the Town.

This franchise is granted upon the following terms:

First: The electric system shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public.

Second: All poles, wires, transformers, substations and other facilities of every kind and nature, forming a part of said electric system, shall be so erected, operated and maintained so as not to interfere with traffic on the traveled portions of the streets or alleys; and the Cooperative, after the construction or reconstruction of said electric system, or any part thereof, shall restore as close to their original condition the streets or alleys on which said poles, wires, transformers, substations and other facilities have been erected, operated and maintained insofar as this is practicable. If the Town desires to relocate any electric system, such relocation shall be done at the sole expense of the Town.

Third: The Cooperative will comply with all reasonable rules and regulations of the municipality and with all ordinances now in effect or which may hereafter be passed insofar as they do not conflict with the terms or purposes of the franchise herein granted.

Fourth: This franchise shall be effective for a period of twenty-five (25) years, measured from the date of the final passage of the Ordinance granting this franchise.

Fifth: The Board of Trustees of the Town, as a condition for granting this franchise by Ordinance, have heretofore determined that the best interest of the Town and its inhabitants and consumers will be best served by imposing a franchise fee on the gross revenue derived by the Cooperative from the sale of electric power to the inhabitants and consumers of the Town, the Town being exempt from such franchise fee.

Therefore, there is hereby imposed a franchise fee equal to five percent (5%) of the gross revenue derived from the gross sale of electric power to the inhabitants and consumers of the Town, excluding the gross revenue derived by the Cooperative from the sale of electric power to the Town.

The payment of the franchise fee being surcharged to the inhabitants and consumers of the town and imposed upon the gross revenue received by the Cooperative from the sale of electric power to the inhabitants and consumers of the Town shall be paid to the Town on a quarterly basis. At the time such quarterly payment is made, the Cooperative shall file with the quarterly payment a certification of such

revenue. The effective date of the imposition of the franchise fee shall be the effective date of this franchise by Ordinance.

In the event any applicable legislation or final Order of Court were to subsequently prevent the payment of the franchise fee, the parties agree to revise this agreement so as to otherwise allow for compensation to be paid to the Town for the use of its streets, alleys, and public ways in an amount comparable to the historical sum paid as a franchise fee.

Sixth: The classification of service in the Town will be the same as the classification of service in other towns served by the Cooperative and the rates and charges for electric service to consumers and users in the Town in each classification will be the same as the rates and charges of the Cooperative in other towns of the same class served by the Cooperative.

Seventh: The Cooperative shall hold the Town harmless from any and all claims, actions, litigations or damages proximately caused by the negligence of the Cooperative, its agents or employees in construction, reconstruction, service when needed, maintenance or operation of the Cooperative's electric distribution system located within the boundaries of the Town.

Eighth: This Ordinance was considered passed and adopted in accordance with the provisions of the Colorado Revised Statutes 31-32-101 through 105 and shall be in full force and effect upon its passage and the Cooperative filing its written acceptance with the Town.

Passed and adopted this 9<sup>th</sup> day of <sup>NOV.</sup>~~November~~ 2015.  
JH

  
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Alex Flores, Mayor

Attested:

  
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Josie Hart, Town Clerk of the Town of Arriba

