

ORDINANCE NO. 2001-03-03

AN ORDINANCE GRANTING AN ELECTRIC DISTRIBUTION FRANCHISE TO PEDERNALES ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC DISTRIBUTION SYSTEM IN THE VILLAGE OF POINT VENTURE, TEXAS; PROVIDING DIFINITIONS; PROVIDING FOR THE FOLLOWING: GRANT OF AUTHORITY; COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; TERRITORIAL AREA INVOLVED; FRANCHISE TERM; FRANCHISE NON-EXCLUSIVE; WRITTEN NOTICE; CONSTRUCTION IN RIGHT-OF-WAY; LEGAL OBLIGATIONS; CUSTOMER SERVICE STANDARDS; PERFORMANCE STANDARDS; TRANSFER OR ASSIGNMENT OF FRANCHISE; LIABILITY INSURANCE; FRANCHISE RENEWAL; THE RIGHT TO REVOKE; REVOCATION PROCEDURES; REMOVAL UPON REVOCATION; FORCE MAJEURE; FRANCHISE FEE PAYMENT; CONSENT APPROVALS; RESERVATION OF REGULATORY POWERS AND LEGAL RIGHTS; GOVERNMENTAL FUNCTION; ACCEPTANCE; A REPEALER; SEVERABILITY; PRPER NOTICE AND MEETING.

WHEREAS, the Village of Point Venture (“Village”) is a municipal corporation organized under the laws of the State of Texas and, pursuant to the Texas Constitution and state law, possesses the power to protect and promote the public health, safety, and welfare to regulate the use of the Public rights-of-way and to issue and revoke licenses; and

WHEREAS, the Village owns or is the proprietor over public streets, rights-of – way, alleys, and other public property and acts as trustee and guardian for the benefit of Village citizens; and

WHEREAS, pursuant to the laws of the State of Texas, including but not limited to Texas Tax Code Section 182.025, and Texas Utilities Code Chapters 33, 37, 41 and 181, the Texas Legislature has recognized and established that an incorporated municipality may make a reasonable lawful charge for the use of public rights-of-way within the municipality; and

WHEREAS, the Village Council has determined that the availability of electric distribution services in the Village will promote the public health, safety, and general welfare of the residents of the Village and would serve the public interest; and

WHEREAS, the Pedernales Electric Cooperative, Inc., a Texas corporation, is now and has been engaged in the electric utility business in the State of Texas and, in furtherance thereof, has erected and maintained certain items of its physical plant in the Village pursuant to such rights as may have been granted it by and under the laws of the State of Texas, and subject to the reasonable exercise of the police powers granted by and under the said laws to the Village, and

WHEREAS, the Village Council finds that the public interest will be serviced by the granting of a non-exclusive franchise to Pedernales Electric Cooperative, Inc., its Successors and Assigns to erect, install, construct, reconstruct, maintain, operate, dismantle, test, repair, replace, retain, and use an electric distribution system in, upon along, across, above, over, under or in any manner connected with the rights-of-way streets, lanes, avenues, sidewalks, alleys, bridges, and highways, and other public places in the Village of Point Venture, Texas as the same now or in the future may exist, for the purpose of electric and distribution services servicing the inhabitants of said Village, and other purposed, for a period of ten (10) years, and regulating same.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF POINT VENTURE, TEXAS:

SECTION I
SHORT TITLE

This Ordinance shall be known and cited as the “Pedernales Franchise Ordinance.” Within this document it shall also be referred to as “this Franchise” or “the Franchise” or “this Ordinance.”

SECTION II
DEFINITIONS

For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and word in the singular number includes the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) “Force Majeure” means a strike, acts of God, acts of public enemies, orders of any kind of government of the United States of America or of the State or any of their departments, agencies, political subdivisions, riots, epidemics, landslides, lightning, earthquakes fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts civil disturbances, explosions, labor unrest, shortage of materials or supplies, partial or entire failure of utilities or any other cause or event not reasonable within the control of the disabled party.

- (2) “Grantee” means Pedernales Electric Cooperative, Inc. or “Cooperative,” its agents lawful successors, transferees or assignees.
- (3) “Person” means any corporation, partnership, proprietorship, cooperative, utility or organization authorized to do business in the State or any natural person.
- (4) “Public Property” means any real property other than a street owned by any governmental unit.
- (5) “Public Rights-of Way” means the area on, below or above a public roadway, highway, street, public sidewalk, alley, water way, or utility easement, in which the Village has an interest. The term does not include the airwaves above a right-of way with regard to wireless telecommunications.
- (6) “Public Utility Commission” means the “PUC” or current regulatory agency of the State of Texas, or any successor agency.
- (7) “State” means the State of Texas.
- (8) “Street” means the surface of and the space above and below any street, road highway, freeway, lane, path, way, alley, court sidewalk, boulevard, parkway, or drive.
- (9) “Village” means the Village of Point Venture, Travis County, Texas, a duly incorporated municipality, and any area annexed thereto from time to time. For purposes of this Franchise, any annexation shall become effective within sixty (60) days of the Village’s written notification of Grantee of the annexation including a complete and accurate listing of the affected addresses.
- (10) “Village Council” means the governing body (i.e., the “City Council” or “Board of Aldermen”) of the Village of Point Venture.

SECTION III GRANT OF AUTHORITY

For the purposed of constructing, operating and maintaining an electric distribution system (“System”) in the Village, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across, and long the streets, including over public rights-of –way and through easements, within the Village such electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, wires, transmission lines and other structures and telephone wires for its own use), for the purpose of supplying electricity to the Village, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

**SECTION IV
COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

A. This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations.

B. Grantee's rights are subject to the police powers of the Village to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise. Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to that power.

**SECTION V
FRANCHISE TERM**

This franchise shall commence upon the effective date of this ordinance and shall expire ten (10) years thereafter unless renewed, revoked or terminated sooner as herein provided.

**SECTION VI
FRANCHISE NON-EXCLUSIVE**

This Franchise granted herein is non-exclusive. The Village specifically reserves the right to grant, at any time, one or more additional franchises for an electric distribution system in accordance with state and federal law, provided, however, no such future franchise shall be granted on terms more favorable or less burdensome than those contained herein, unless otherwise required by law.

**SECTION VII
WRITTEN NOTICE**

All notices or demands required to be given under this Franchise shall be deemed to be given when delivered personally to the persons designated below or upon the date actually received as evidenced by registered or certified mail receipt addressed as follows:

If to the Village: Mayor
Village of Point Venture
549 Venture Boulevard, S.
Point Venture, Texas 78645

If to Grantee: General Manager
Pedernales Electric Cooperative, Inc.
P.O. Box 1

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

SECTION VIII CONSTRUCTION IN RIGHT-OF-WAY

A. Right-of-Way Construction Permits

Grantee shall be subject to applicable Village ordinances governing rights-of-way construction permits for conducting land disturbing activities in the public rights-of-way. Such permits shall be issued only in compliance with applicable Village ordinances.

B. Interference with Public Rights-of-Way

Grantee may not locate or maintain its Facilities so as to unreasonably interfere with the use of Village property or public rights-of-way by Village or by other persons authorized to use or be present in or upon Village property or public rights-of-way. In the event of unreasonable interference to Village property or public rights-of-way, such Facilities shall be moved by Grantee, temporarily or permanently, as determined by the Village Mayor or the Mayor's designee upon reasonable notice.

C. Compliance With Other Law

All work undertaken in connection with the construction, reconstruction, maintenance, operation or repair of the Grantee's system shall be subject to and governed by all applicable state and federal laws, rules and regulations including those of any state or federal agency having jurisdiction.

D. Trimming Tree

The Grantee shall have the authority to trim trees, bushes and shrubs upon and overhanging the streets of the Village as to prevent the branches of such trees from coming in contact with the Grantee's wires and cables. The Village Council may, from time to time, pass ordinances regulating the trimming or removal of trees on or along Village property, however, reasonable tree trimming and vegetation control by Grantee shall be allowed.

SECTION IX LEGAL OBLIGATIONS

A. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the Village, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments if every kind arising out of or due to the **Grantee's** construction, maintenance, or operation of a system in the Village, including but not limited to damages for injury or death or damages to property, real

or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same. Grantee shall **not** be required to hold harmless and indemnify the Village for any claims arising out of the negligence of the Village, its officers, boards, commissions, councils, elected officials, agents or employees.

B. The Grantee shall , at the sole risk and expense of the Grantee, upon demand of the Village, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the Village, its officers, boards, commission, agents, or employees, arising out of or due to the **Grantee's** construction or operation of grantee's system in the Village.

C. The Grantee shall pay and satisfy and shall cause to be paid and satisfied any final and non-appealable judgment, decree, order, directive, or demand, rendered, made or issued against the Grantee, the Village, its officers, boards, commissions, agents or employees arising out of or due to the Grantee's construction or operation of Grantee's system in the Village.

D. In order for the Village to assert its rights to be indemnified, defend and held harmless, the Village must:

- a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
- b. Afford Grantee the opportunity to fully participate in any compromise, settlement, resolution or disposition of such claim or proceeding; and
- c. Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

E. Grantee shall have the sole right to control the defense and settlement of any claim or legal proceeding that gives rise to a right of indemnity under this Section.

F. The Village shall not and does not by reason of the granting of this franchise assume any liability of the Grantee for injury to persons, damage to property or penalties.

G. This provision is not intended to create a cause of action or liability for the benefit of third parties, but is solely for the benefit of the Grantee and the Village.

SECTION X LIABILITY INSURANCE

- A. Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the Grantee with regard to all damages and all obligations in Section X above.
- B. Upon request of the Village, Grantee shall furnish to the Village satisfactory evidence that an insurance policy has been obtained and is in full force and effect. Grantee shall deliver written notice of expiration, cancellation, reduction or material change in coverage to the Mayor or the Mayor's designee at least thirty (30) days in advance of the effective date thereof. Such liability insurance shall be kept in full force and effect by the Grantee during the existence of this franchise and thereafter for a period of not less than twelve (12) months

**SECTION XI
CUSTOMER SERVICE STANDARDS**

Grantee shall at all times comply with the customer service standards of the Grantee's Board of Directors or the PUC, as appropriate, including without limitation those related to notifications to customers, office hours and availability, installations, outages, service calls, billing, refunds, and credits as they may be amended from time to time.

**SECTION XII
PERFORMANCE STANDARDS**

- A. The Grantee shall construct, operate and maintain its system according to the specifications of Grantee's Board of Directors and any state or federal agency having jurisdiction.
- B. The Grantee shall at all times employ a reasonable standard of care to prevent failures or accidents which are likely to cause damages, injuries or nuisances to the public.
- C. Upon request by Village with a reasonable time to comply, Grantee shall appear at a Village Council meeting to give a review of its operation, maintenance and performance during the preceding twelve (12) months. Topics which may be addressed include fees, services, application of new technologies, system technical performance, customer complaints, subsequent legal developments and others. Nothing in this subsection shall be construed as re-opening franchise negotiations.

**SECTION XIII
TRANSFER OR ASSIGNMENT OF FRANCHISE**

The rights granted herein shall not be transferred or assigned in whole or in part, by the Grantee without ninety (90) days advance written notice to the Village. Notwithstanding the foregoing, no notice shall be required for any transfer or assignment of the franchise to any entity controlling, controlled by or under the same

common control as the Grantee. Any transferee, other than one controlling, controlled by, or under the same common control as Grantee, must show financial responsibility as determined by Village.

**SECTION XIV
FRANCHISE RENEWAL**

This Franchise shall be renewed in accordance with applicable state and federal law.

**SECTION XV
VILLAGE'S RIGHT TO REVOKE**

- A.** In addition to all other rights which village has pursuant to law or equity, the Village reserves the right to revoke, terminate or cancel this Franchise and all rights and privileges pertaining thereto in the event that.
 - (1) Grantee violates any material provision of this Franchise, or
 - (2) Grantee practices any fraud upon the Village; or
 - (3) Grantee becomes insolvent, unable or unwilling to pay its debts, or its adjudged bankrupt or a receiver is appointed to it.
- B.** Grantee may appeal any revocation to a court of competent jurisdiction.

**SECTION XVI
REVOCAION PROCEDURES**

- A.** The Village shall notify the Grantee of its intention to revoke, terminate or cancel this Franchise. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee and opportunity to remedy the violation.
- B.** Grantee shall have ninety (90) days subsequent to receipt of the notice in which to correct the violation before the Village may formally revoke, terminate or cancel this franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the Village that there is a dispute as to whether a violation has, in fact occurred. Such notice by Grantee to the Village shall stay the ninety (90) day period described above.
- C.** Upon receipt of the Grantee of a dispute as to whether a violation has, in fact, occurred pursuant to paragraph (B) above, the Village shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the Village shall supplement the decision with written findings of fact.

- D.** If after hearing the dispute, Grantee has been found to be in default, Grantee shall then have ninety (90) days (or such longer period of time as may be reasonably necessary) from such a determination to remedy the violation or failure. At any time after that ninety (90) day period the Village may by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke, terminate or cancel this Franchise if Grantee fails to cure such default.
- E.** Any such final decision of the Village may be appealed to any court of competent jurisdiction, which filing shall stay any such revocation, termination or cancellation of this Franchise.
- F.** No termination of this Franchise shall operate as a waiver or release of Grantee from any liability which arises or arose out of any act or failure to act by Grantee prior to termination.

**SECTION XVII
FORCE MAJEURE**

If by reason of a Force Majeure any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

**SECTION XVIII
FRANCHISE FEE PAYMENT**

- A.** Subject to applicable law, in consideration for the rights and privileges herein granted, the administration of this franchise by the Village, the temporary interference with the use of public rights-of-way and other costs and obligations undertaken by the Village herein, the Grantee shall pay to the Village a franchise fee as follows:
 - (1) Before January 1, 2001: Two percent of the gross receipts of Grantee for the sale of electric energy to retail customers within the Village.
 - (2) On and after January 1, 2002: \$0.00146 for each kilowatt-hour of electricity delivered by the Grantee to retail customer points of delivery located within the boundaries of the Village.

The franchise fee shall be due in quarterly payments remitted to the Village on or before the fifteenth (15th) day of the month following the preceding quarter of the calendar year. Franchise fee compensation shall accrue beginning August 12, 2000, the effective date of incorporation of the Village.

- B.** Grantee and the Village, by agreement, may amend, modify, repeal or replace this section during the term of the franchise if deemed necessary. Grantee and the Village agree that such amendment, repeal or replacement shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this franchise, and the remainder of this franchise shall be enforced as written.
- C.** Upon request, the Grantee shall file with the Mayor within thirty (30) days after the expiration of each calendar year, or portion thereof during which this franchise is in effect, a statement showing in reasonable detail the gross receipts collected or kilowatt hours billed to customers (as applicable) during the preceding calendar year. An interest charge shall be assessed on a franchise fee payment not paid on the due date at the rate of ten percent (10%) per year for each day that the franchise fee payment is late, and a payment for the interest due shall accompany the late franchise fee payment.
- D.** The consideration set forth in this diction shall be paid and received in lieu of any other license, charge, fee, street or alley rental, or other character of charge for use and occupancy of the streets, alleys and public places of the Village and in lieu of any pole tax or inspection fee tax or other tax, any lawful permit, inspection or other fee whether charge to the Grantee or any of its contractors, and any imposition other than the usual general ad valorem taxes, special assessments to abutting landowners or sales taxes now or hereafter lawfully levied.
- E.** The Village shall have the right to inspect, at the Grantee's business office during normal business hours, the books and financial records of the Grantee compiled in the ordinary course of business necessary to verify franchise fee payments. The franchise fee shall be deemed to reimburse the Village for the rights granted herein and for all costs of regulation and administration of the Franchise.
- F.** No acceptance of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that Village may have for further additional sums payable under this Ordinance. All amounts paid shall be subject to audit and recomputation by Village.
- G.** The period of recomputation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment is due from Grantee.

**SECTION XIX
CONSENT APPROVALS**

Where in this document consent and/or approval of the Village is required, such consent or approval shall be timely delivered and not unreasonably withheld.

**SECTION XX
RESERVATION OF REGULATORY POWERS
AND LEGAL RIGHTS**

- A. The Village by the granting of this franchise does not render or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the Village under the Constitution and statutes of the State of Texas and under the Ordinances of the Village to regulate the use of the streets by the Grantee.

- B. The Grantee by accepting this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now or hereafter vested in the Grantee under the Constitution and the statutes of the State of Texas and/or the United States of America.

**SECTION XXI
GOVERNMENTAL FUNCTION**

All of the lawful regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

**SECTION XXII
ACCEPTANCE**

The Grantee shall, within thirty (30) days from the date this Franchise takes effect, file with the Village Secretary of the Village a written, sworn statement signed in its name and behalf in substantially the following form:

To the Honorable Mayor of Point Venture:
Pedernales Electric Cooperative, Inc., for itself, successors
and assigns, hereby accepts the attached franchise and
agrees to be bound by all of its terms and provision.

**SECTION XXIII
REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

**SECTION XXIV
SEVERABILITY**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this 5th day of March, 2001, by a 4 to 0 vote of the Village Council of the Village of Point Venture, Texas.