

ORDINANCE NO. 594

AN ORDINANCE GRANTING A MODIFICATION OF FRANCHISE NO. 312 TO LEA COUNTY ELECTRIC COOPERATIVE, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION OF THE ELECTRIC SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LOVINGTON, LEA COUNTY, NEW MEXICO:

SECTION ONE. SHORT TITLE. This Ordinance shall be known and may be cited as the “Lea County Electric Cooperative, Inc., Franchise Ordinance”.

SECTION TWO. DEFINITIONS. For the purpose of this Ordinance, 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, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1. “City” is the City of Lovington.
2. “Company” is a non-profit membership corporation and a rural electric cooperative organized under and pursuant to the New Mexico Electric Cooperative Act, §§ 62-15-1 through 62-15-33, N.M.S.A. (1993 Repl.), as amended, and is the grantee of rights under this Franchise.
3. “Council” is the City Commission of the City of Lovington.
4. “Person” is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION THREE. GRANT OF AUTHORITY. There is hereby granted by the City of the Company the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof and additions thereto in the City, poles, wires, cables, underground conduits, manholes and other electric fixtures necessary or proper for the maintenance and operation in the City of an electric transmission and distribution system and wires connected therewith.

1. Non-Exclusive Grant. The right to use and occupy said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways, and places to any person any period of this Franchise.

SECTION FOUR. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Company shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

SECTION FIVE. COMPANY LIABILITY—INDEMNIFICATION. It is expressly understood and agreed by and between the Company and the City that the Company shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation or maintenance of its electric system in the City. The City shall notify the Company's representative in the City within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence aforesaid on the part of the Company.

SECTION SIX. SERVICE STANDARDS. The Company shall maintain and operate its plant and system and render efficient service in accordance with and as prescribed by Rules 560 of the Public Regulation Commission of the State of New Mexico.

SECTION SEVEN. COMPANY RULES. The Company shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure as nearly as possible uninterrupted service to each and all of its customers; provided, however, that such rules, regulation, terms, and conditions shall not be in conflict with the provisions hereof or of the laws of the State of New Mexico, and shall be subject to approval by the Public Regulation Commission of the State of New Mexico.

SECTION EIGHT. CONDITIONS ON STREET OCCUPANCY.

1. USE. All transmission and distribution structures, lines, and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.
2. RESTORATION. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing by the Company, the Company shall, at its own cost and expense and in a manner approved by the City Inspector, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good condition as before said work was commenced.
3. RELOCATION. In the event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley, or other public

way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cable, and other fixtures at its own expense.

4. PLACEMENT OF FIXTURES. The Company shall not place poles or other fixtures where the same will interfere with any gas lamp, telephone wire or conduct, water hydrant, or water main, and all such poles or other fixtures shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley and then in such a manner as not to interfere with the usual travel on said streets, alleys, and public ways.
5. TEMPORARY REMOVAL OF WIRES FOR BUILDING MOVING. The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
6. TREE TRIMMING. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, at the expense of the Company.

SECTION NINE. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this Franchise shall be deemed

to prohibit the establishment of a graduated scale of charges and classified rate schedule to which any customer coming within such classification would be entitled.

SECTION TEN. EXTENSION POLICY. The Company shall file with the City Clerk its extension policy as filed with and approved by the City Council and the Public Regulation Commission of the State of New Mexico, and the Company shall not make or refuse to make any extension, except as permitted by this Ordinance.

1. PUBLICATION. Upon acceptance of this Franchise, the Company, at its own expense, shall cause to have published this Franchise in a newspaper of general circulation in the City. Additional publications, as prescribed by the New Mexico Regulation Commission, shall also be timely published in a newspaper of general circulation in the City, at the expense of the Company.

SECTION ELEVEN. APPROVAL OF TRANSFER. The City agrees during the term of this franchise not to exercise its powers of eminent domain over the lines and facilities of the company nor take any action inconsistent with the terms of this franchise. The Company shall not sell nor transfer its plant or system to another, nor transfer any rights under this Franchise to another without Council approval; provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the Office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise, and agreeing to perform all the conditions thereof.

SECTION TWELVE. CITY RIGHT IN FRANCHISE.

1. CITY RULES. The right is hereby reserved to the City to adopt, such additional regulations, in addition to the provisions herein contained and to existing applicable ordinances, as it shall find necessary in the exercise of the police power, etc., provided that

such regulations, by ordinance or otherwise, shall not be in conflict with the laws of the State of New Mexico and the rules and regulations of the New Mexico Regulation Commission, Federal Regulatory Commission and all other Federal and State regulatory bodies.

2. USE OF SYSTEM BY CITY. The City shall have the right, during the life of this Franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the Company within the City limits wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the Company and in accordance with its specifications.
 - a. COMPLIANCE WITH COMPANY RULES. The City, in its use and maintenance of such wires and fixtures, shall at all times comply with the rules and regulations of the Company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Company and between the wires and fixtures used by the City.
 - b. LIABILITY. The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this Section and shall save the Company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures to the poles of the Company. In case of re-arrangement of the Company plant or removal of poles or fixtures, the City shall save the Company harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures.
3. INSPECTION. The City shall have the right to inspect all construction or installation work

performed, subject to the provisions of this Ordinance.

4. PROCEDURE AFTER TERMINATION OR REVOCATION. Upon the revocation of this Franchise by the Council, or at the end of the term of this Franchise, the City shall have the right to determine whether the Company shall continue to operate and maintain its transmission and distribution systems pending the decision of the City as to the future maintenance and operation of the transmission and distribution systems.

SECTION THIRTEEN. PAYMENTS TO CITY. The Company shall pay the City for the privilege of operating an electric utility system under this Franchise:

1. An amount equal to two per centum of the gross revenues received from the sale of electric energy to members and consumers within the incorporated limits of the City excepting sales to, public utilities, common carriers, the State of New Mexico, and its subdivisions, and the Federal Government and its agencies, departments and authorities, and school districts, the industrial park located south of the City upon which the Navajo Refinery is located and the payment of said amount shall be made the first day of the next month following billing and, with the exception of the additional amount to be paid under subparagraph (2) hereof, same shall be in lieu of any and all other tax to be paid to the City by the Company.
2. And in addition to the amount required under subparagraph (1) above, a further amount also equal to two per centum of the gross revenues derived from the sale of electric energy to members and consumers within the incorporated limits of the City excepting sales to, public utilities, common carriers, the State of New Mexico, and its subdivisions, and the Federal Government and its agencies, departments or authorities, and school districts, the industrial park located south of the City upon which the Navajo Refinery is located; and

the payment of said amount shall be made the first day of the next month following billing, provide, however, that the amount so received by the City under the provision of this Subparagraph (2) shall be used and expended by the City only for the acquisition, construction, repair, extension or improvements of youth recreational facilities within the City, and not otherwise.

SECTION FOURTEEN. RATES. Rates charged by the Company for service hereunder shall be fair and reasonable, as approved by the New Mexico Public Regulation Commission and designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. Such rates shall be subject to redetermination at such intervals as required by the New Mexico Public Regulation Commission. The Company agrees that it shall be subject to all authority now or hereafter possessed by the Public Regulation Commission, or any other regulatory body having competent jurisdiction, to fix just, reasonable and compensatory electric rates. When this Franchise takes effect, the Company shall have the authority to charge and collect, not to exceed the appropriate schedule of rates for each class of consumer which shall remain effective until changed or modified by the New Mexico Public Regulation Commission, in accordance with the general standards set out in this Section.

1. SAVINGS TO CUSTOMERS. If during the term of this Franchise the Company purchases electric energy, other than dump or emergency energy, from the United States for distribution in the Company's district, the savings which accrue to the Company by reason of such purchase of the electric energy used in the City shall be forthwith passed on to its consumers. If during the term of this Franchise the Company received refunds, or if the cost to the Company of providing electric service is reduced

by order of any regulatory body having competent jurisdiction, the Company shall pass on to its customers such refund or any savings resulting therefrom.

SECTION FIFTEEN. RECORDS AND REPORTS. The City shall have access during normal business hours to all the Company's plans, contract, and engineering, accounting, financial and statistical customer and service records relating to the property and the operation of the Company, and to all other records required to be kept hereunder. Upon request, the Company will furnish copies of meter tests to the City with an annual summary report showing gross revenues received by the Company from its operations within the City during the preceding year, together with a copy of the Annual Report of the Company.

SECTION SIXTEEN. TERM OF FRANCHISE. The Franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the Company with the City Clerk, and shall continue in force and effect for a term of twenty-five (25) years after the effective date of this Franchise; provided that, if the acceptance is not filed within thirty (30) days, the provisions of this Franchise shall be null and void.

SECTION SEVENTEEN. PUBLICATION COST. The Company shall assume the cost of publication of this Franchise as such publication is required by law. A bill for publication cost shall be presented to the Company by the City Treasurer upon the Company's filing of acceptance and shall be paid at that time.

PASSED, ADOPTED AND APROVED by the City Commission of the City of Lovington, Lea County, New Mexico, this ____ day of _____ 2022.

CITY OF LOVINGTON

By: _____
MAYOR

ATTEST:

CITY CLERK

Publish:

Effective:

ACCEPTANCE

WHEREAS, the City Commission of the City of Lovington, Lea County, New Mexico, enacted on _____, 2022, an Ordinance entitled:

AN ORDINANCE GRANTING A MODIFICATION OF FRANCHISE NO. 312 TO LEA COUNTY ELECTRIC COOPERATIVE, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION OF THE ELECTRIC SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

and,

WHEREAS, said Ordinance was duly approved by the mayor and attested by the City Clerk.

NOW, THEREFORE, in accordance with the terms of said Ordinance, as enacted, approved and attested, Lea County Electric Cooperative, Inc., hereby accepts said Ordinance and files this as written acceptance with the Clerk of the City of Lovington.

DATED this ____ day of _____, 2022.

LEA COUNTY ELECTRIC COOPERATIVE, INC.

PRESIDENT