

13.0400

**NORDIC ELECTRIC, L.L.C.
ELECTRIC FRANCHISE ORDINANCE
TOWNSHIP OF GRAND HAVEN, MICHIGAN
ord. no. 305 eff. Jan. 19, 1999**

An Ordinance granting to Nordic Electric, L.L.C., its successors and assigns, the right, power, and authority, but only to the extent specified in this Ordinance, to transmit, supply, deliver and distribute electricity and electrical services as specifically set forth herein, along, over and under the highways, streets, alleys, bridges, waterways and other public places, to customers in Grand Haven Charter Township, Ottawa County, Michigan, and to otherwise do business therein, for a period of five (5) years, unless revoked sooner by the Township.

THE TOWNSHIP OF GRAND HAVEN, OTTAWA COUNTY, MICHIGAN
ORDAINS:

13.0401

Sec. 1 GRANT; TERM

Grand Haven Charter Township, Ottawa County, State of Michigan (hereinafter called "Township"), hereby grants the right, power and authority to the Nordic Electric, L.L.C., its successors and assigns (hereinafter called "Grantee"). To transmit, supply, deliver and distribute electricity through and over existing and/or future electrical lines operated and owned by an authorized public utility holding a valid Township electric franchise, and to provide electrical service as part of a direct access program approved or authorized by a state or federal agency, or otherwise as permitted by law along, over and under the highways, streets, alleys, bridges, and waterways to electric customers in the Township for a period of five (5) years, unless revoked sooner by the Township. This grant is subject to and dependent on Grantee obtaining all other approvals or certificates required by law to provide electrical service in the Township. Notwithstanding the first sentence of this Section, Grantee shall not have the right, power or authority to construct or maintain electric lines including, but without limitation, towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances along, over or under the highways, streets, alleys, bridges, and waterways in the Township. The franchise granted pursuant to this Ordinance is hereby designated by the Township Board as a revocable franchise.

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Sec. 2 CONSIDERATIONS

In consideration of the right, power and authority hereby granted, the Grantee shall faithfully perform all duties required by this Ordinance and shall comply fully at all times with the terms and provisions of this Ordinance.

13.0403 Sec. 3 CONDITIONS

No highway, street, alley, bridge, or waterway used by the Grantee shall be at any time obstructed by the Grantee in the performance of its business hereunder.

13.0404 Sec. 4 HOLD HARMLESS

The Grantee shall at all times keep and save the Township and its Township Board, officers, employees or agents free and harmless from all loss, costs and expense to which they may be subject by reason of the granting of this franchise or on account of any act or omission of Grantee. In case any action is commenced against the Township, its Township Board, officers, employees or agents, on account of, or as a direct or indirect result of, the franchise herein given, or on account of any act or omission of Grantee, the Grantee shall, upon notice, defend the Township, its Township Board, officers, employees or agents, and save them free and harmless from all loss, cost and damage, including litigations costs and actual attorney fees, arising therefore.

13.0405 Sec. 5 EXTENSIONS

Subject to all of the terms of this Ordinance, and specifically Section 8, the Grantee may from time to time extend its services and furnish electricity to any and all electric customers within the Township in accordance with applicable laws, rules and regulations. However, the prohibition pertaining to construction in Section 1 shall remain effective.

13.0406 Sec. 6 FRANCHISE NOT ENCLUSIVE

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

14.0407 Sec. 7 RATES

So long as customers in the Township will be able to freely elect Grantee as their electric service provider, the Grantee shall be entitled to charge its customers for the services and electricity at the rates contractually agreed upon with its customers. This Section does not attempt to convey to Grantee any power and authority beyond that granted by applicable state or federal law, rule or regulation.

14.0408 Sec. 8 CUSTOMER LIMITATIONS

Electrical service pursuant to this Ordinance shall be limited to the provision of unbundled generation services over the transmission and distribution facilities of the existing electric utilities currently operating within the Township; namely, Consumers Energy Company and the City of Grand Haven Board of Light and Power. With the exception of meters and telemetry equipment; Grantee shall be

precluded from constructing its own facilities for delivering energy to its customers.

13.0409 Sec. 9 CERTIFICATE

The Grantee shall continue to provide to the Township a copy of its Certificate of Convenience and Necessity issued pursuant to Act 1929 of Public Act 69, as amended, MCL 460.501 et seq; MSA 22.141 et seq, as the same may be amended from time to time indicating that the Grantee has the authority from the Michigan Public Service Commission to provide unbundled electric generation services in the Township.

13.0410 Sec. 10 ACCEPTANCE

The franchise granted by this Ordinance and the terms and provisions of this Ordinance shall be unconditionally accepted in writing by Grantee. If the Grantee does not file a copy of its written unconditional acceptance of this Ordinance with the Township within thirty (30) days of the date on which this Ordinance is adopted, then the franchise granted by this Ordinance shall immediately terminate without notice to Grantee.

13.0411 Sec. 11 PUBLIC EMERGENCY

Grantee agrees that if in the case of a public emergency the Township disrupts any of Grantee's facilities, the Township shall not be responsible to the Grantee for any damages caused by such disruption. Further, Grantee agrees that the Township shall be held faultless with regard to all repairs and/or the cost of such repairs.

13.0412 Sec. 12 REVOCATION

The franchise granted by this Ordinance is subject to revocation at any time by the Township upon sixty (60) days written notice by certified mail to Grantee at 2010 Hogback Road, Suite 4, Ann Arbor, Michigan 48105, or at such other address as Grantee shall specify in writing to the Township for the receipt of notices.

13.0413 Sec. 13 OTHER REGULATION

The Grantee shall, as to all conditions and elements of service, be and remain subject to all rules and regulations provided by law which pertain to the services or electricity furnished by Grantee in the Township. Grantee shall be and remain subject to all ordinances, rules and regulations of the Township now in effect, or which might subsequently be adopted, for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided, however, that nothing herein shall be construed as a waiver by Grantee of any of

its existing or future rights under Michigan or federal law or a limitation upon the existing or future powers of the Township under Michigan or federal law.

13.0414 Sec. 14 SEVERABILITY AND CAPTIONS

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof, are hereby declared to be severable. If any part, section, subsection, sentence, phrase and clause is adjudged unconstitutional or invalid, the remainder of the Ordinance shall not be affected thereby. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this Ordinance.

13.0415 Sec. 15 ADMINISTRATIVE LIABILITY

No officer, agent or employee of Grand Haven Charter Township, or a member of Grand Haven Charter Township Board, shall be rendered liable for any damage that may occur to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of his or her duties and responsibilities pursuant to this Ordinance.

13.0416 Sec. 16 ASSIGNMENT

Grantee shall notify the Township in writing thirty (30) days in advance as to any proposed assignment or transfer of its electric franchise to a third party.

13.0417 Sec. 17 FEES

Grantee shall be responsible for reimbursing the Township a fee associated with the award of this franchise which may include, but not be limited to, attorney fees and publication costs. The fee to be charged may be included in the Township fee schedule.

13.0418 Sec. 18 REPEAL

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

13.0419 Sec. 19 EFFECTIVE DATE

This Ordinance shall be effective January 19, 1999.