

City of Marquette

Marquette County, Michigan

ORDINANCE NO. 706

A LIMITED FRANCHISE, granting to UPPER PENINSULA POWER COMPANY, its successors and assigns, the right, power and authority to lay, maintain and operate electric and fiber lines, poles and services on, along, across and under the highways, streets, alleys, bridges and other public places, and to conduct a local electric business solely with the Marquette Range Coal Services Company in the City of Marquette, Marquette County, Michigan for a period of thirty years.

The City of Marquette ORDAINS:

Section 1. Grant of Franchise. The City of Marquette, located in Marquette County, Michigan (the "City") hereby grants to Upper Peninsula Power Company, its subsidiaries, successors, and assigns (the "Company") consent, permission, right and authority to construct, lay, operate, maintain, use, and replace electric, fiber, and other communication lines, poles, cables, conduits, appliances, buildings and other necessary works, in the highways, streets, alleys and other public places in the City as necessary to provide electric service to the Marquette Range Coal Services Company and a non-exclusive franchise is hereby granted to the Company, its subsidiaries, successors, and assigns, to transact local business in the City for the sole purposes of producing, storing, transmitting, selling, and distributing electricity into and through the City to provide electric service to the Marquette Range Coal Services Company.

Section 2. Consideration. In consideration of the rights, power and authority hereby granted, the Company shall faithfully perform all things required by the terms hereof.

Section 3. Use of Streets and Other Public Places. The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within the City and shall within a reasonable time after making an opening or excavations, repair the same and leave it in as good condition as before the opening or excavation was made. The Company, its successors and assigns shall use due care in exercising the privileges herein contained and shall be liable to the City and to every owner of property abutting the Company's lines or other facilities, for all damages and costs arising from the negligence of the Company or its officers, agents, and servants.

Section 4. Force Majeure. The Company shall not be liable for failure to furnish service as herein provided, or for any breach of the Company's obligations hereunder, if such failure or breach is caused by acts of God, labor troubles, riot, or any other causes or contingencies not reasonably within the control of the Company.

Section 5. Hold Harmless. The Company shall at all times keep and save the City free and harmless from all loss, costs and expense to which it may be subject by reason of the Company's negligent construction and negligent maintenance of the structures and equipment hereby authorized. If any action is commenced against the City resulting from Company's negligent construction and maintenance, the Company shall, upon notice, defend the City and save

it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.

Section 6. Effective Date; Term of Franchise; Acceptance by the Company. This Franchise shall take effect 30 days following the date of publication thereof, which publication shall be made within thirty (30) days after the date of its adoption, and shall continue in effect for a period of thirty (30) years thereafter; provided, however, that when this Franchise shall become effective the City Clerk shall deliver to the Company a certified copy of the Franchise accompanied by written evidence of publication thereof as required by law, and the Company shall, within sixty (60) days after receipt of the above documents, file with the City Clerk its written acceptance of the conditions and provisions hereof.

Section 7. Franchise Not Exclusive. The rights, power and authority granted by this Franchise are not exclusive, and nothing contained herein shall prevent the City from granting other non-exclusive electric franchises.

Section 8. Franchise Revocable. The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

Section 9. Effect and Interpretation of Franchise. All other franchises, ordinances and resolutions related to the Company, and parts thereof, which conflict with any of the terms of this Franchise are hereby rescinded, to the extent of such conflict. The catch line headings which precede each section of this Franchise are for convenience in reference only and shall not be taken into consideration in the construction or interpretation of any of the provisions of this Franchise.

Section 10. Successors and Assigns. The words "Upper Peninsula Power Company" and the "Company," wherever used herein, are intended and shall be held and construed to mean and include both Upper Peninsula Power Company and its subsidiaries, successors, and assigns, whether so expressed or not.

Ayes: _____

Nays: _____

Date Passed: _____

Attested, by Order of the City of Marquette,
Marquette County, Michigan

City Clerk

City Manager

CERTIFICATION

The undersigned, being the duly qualified and acting Clerk of the City of Marquette, Marquette County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the City Council at a regular meeting held on _____, 2019, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and, (4) minutes of such meeting were kept and will be or have been made available as required thereby.

Dated: _____

Marquette City Clerk

ACCEPTANCE

This Franchise is hereby accepted by the Company on _____, 2019 pursuant to the terms and conditions set forth in the foregoing Franchise.

UPPER PENINSULA POWER
COMPANY

By: _____

Its: _____