

## ORDINANCE NO. 4, SERIES 2016

### AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO POWDER RIVER ENERGY CORPORATION TO CONSTRUCT, ACQUIRE, OPERATE AND MAINTAIN AN ELECTRIC SYSTEM IN THE TOWN OF UPTON, WYOMING.

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF UPTON, WESTON COUNTY, WYOMING:

#### **Section 1: Right to Construct, Operate and Maintain**

Powder River Energy Corporation, hereinafter called PRECorp, a corporation organized and existing under the laws of the State of Wyoming, its successors and assigns, is hereby granted a franchise by the Town of Upton, Wyoming, hereinafter called Town, to construct or acquire, either or both, and thereafter to operate and maintain electric facilities consisting of, without limitation, lines, generating plants, substations, transformers, switches and appurtenances, within the limits of the Town for the purpose of generating and supplying electric energy for light, heat and power; to furnish electric energy for light, heat and power for public and private use within the Town and to transmit electricity through and beyond the Town; to construct, reconstruct, maintain and operate electric transmission and distribution lines with all necessary appurtenances, including without limitation, poles, wires, anchors, anchor rods, metering and transformers on, over, along, upon, under or across the public streets, roads, alleys or other public thoroughfares of the Town; to make all necessary excavations in the public streets, roads, alleys or other public thoroughfares and to cut and trim all trees or shrubbery insofar as may be necessary to keep them clear of the transmission and distribution lines and appurtenances, all subject to the following terms and conditions.

#### **Section 2: Construction, Maintenance, and Operation**

- A. The electric facilities shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards and convenience to the public. The Town shall be given at least 48 hours notices in advance of any scheduled repairs, maintenance or construction within the Town limits. Emergency maintenance or repair may be done without notice, and the Town with permission of the affected landowners may waive notice requirements.
- B. All poles, wires, anchors, anchor rods and other appurtenances which are located on, over, along, upon, under or across the public streets, roads, alleys or other property of the Town shall be placed so as not to interfere with traffic on the traveled portion of such property; and PRECorp, after the construction or reconstruction of the electric transmission or distribution lines, will restore to their original condition at its own expense, the streets, roads, alleys or other public thoroughfares on which such lines have been constructed. All electrical lines and facilities placed in the Town shall be mapped. Their location, types and use shall be given to the Town along with the map(s) illustrating their locations.

- C. Whenever the poles, anchors, anchor rods, transformer and other appurtenances located on, over, along, under or across the public streets, roads, alleys or other public thoroughfares interfere with the widening or improvement of such public thoroughfare, PRECorp shall, at the request of the Town, move its poles, anchors, anchor rods, transformers and other appurtenances at its own expense to such other reasonable location as may be designated by an authorized representative of the Town.
- D. The services rendered by PRECorp shall be continuous except that PRECorp shall not be held accountable for a failure of service which is caused by acts of God, strikes or other causes beyond the control of PRECorp.
- E. PRECorp will comply with all reasonable rules and regulations of the Town 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.
- F. For and in consideration of the rights and privileges herein granted, PRECorp, its successors and assigns, shall at all times during the term of this franchise, maintain a proper and efficient electric power and light system for the purpose of supplying the Town and its inhabitants with electric energy at rates as shall be reasonable and fixed and determined in the manner provided by law.
- G. Neither party to this Agreement shall be liable for any loss or damage to property or injury to or death of persons, whether suffered by the other party, its agents or employees, or by any third person, persons or corporation(s), resulting from the location, use or operation of electrical or other equipment located on either side of the point of delivery including the failure of any electrical equipment located on either side of the point of delivery including the failure of any electrical equipment caused by defects or inadequate capacity or from electric capacity and energy present therein, and each party agrees to indemnify and save the other party harmless from all such loss, damages, injuries or death.

**Section 3: Length of Franchise**

The Town hereby grants PRECorp the aforementioned franchise for a period of five years commencing immediately upon passage of this ordinance. Consideration may be given to PRECorp for continued operation in the Town after expiration of this franchise, but the Town is not obligated to extend this franchise and no option to extend this franchise shall be implied by the terms and conditions herein.

**Section 4: Franchise Fee**

PRECorp, for and in consideration of the granting of this nonexclusive franchise, shall pay to the Town a franchise fee of two percent (2%) of its gross revenue generated from the sale of electricity on all residential and general service accounts, one-half of one percent (.5%) of its gross revenue generated from the sale of electricity on all large power accounts, and one-fourth of one percent (.25%) of its gross revenue generated from the sale of electricity on all large power transmission accounts. PRECorp shall be allowed to reduce gross revenue by subtracting any uncollectible accounts from gross revenue. PRECorp will provide the Town with an accounting of all fees generated and based upon filed tariffs in effect for the calendar year for which the franchise fee is paid. The term "gross revenue" shall mean and be construed as PRECorp's gross revenue derived from the sale of electrical energy to customers within the Town limits, provided however, there shall be excluded from gross revenue the amount received by PRECorp from Town, County, State, School and Federal agencies for electrical services. The franchise fee for the previous calendar year for which the franchise agreement was in effect shall be paid on or before April 15<sup>th</sup> of each year. PRECorp shall provide the Town with an accounting showing how the amount paid was calculated. If there is any disagreement, PRECorp shall cooperate with the Town and provide access to such records as the Town may reasonably request to verify the amount of the payment.

**Section 5: Repealing All Ordinances in Conflict Herewith**

Any ordinance of the Town in conflict herewith be and the same is hereby repealed.

**Section 6: Severability**

Should the courts of this State or the United States declare any section, provision, paragraph, clause, sentence, phrase or part of this ordinance invalid or unconstitutional or in conflict with any other section, provision, paragraph, clause, sentence, phrase or part thereof of this ordinance, then such decision shall affect only the section, provision, paragraph, clause, sentence, phrase or part thereof declared to be unconstitutional or unauthorized and shall not affect any other part of this ordinance.

Passed on first reading: 8/8/2016

Passed on second reading: 9/13/16

PASSED, APPROVED AND ADOPTED on third reading this 11 day of October, 2016.