

VILLAGE OF BERRIEN SPRINGS
ORDINANCE NUMBER 373

An Ordinance granting a revocable franchise to Indiana Michigan Power Company, its successors and assigns, for the right to acquire, construct, maintain, and operate in the streets, thoroughfares, alleys, bridges, and public places of the Village of Berrien Springs, Berrien County, State of Michigan, and its successors, lines and appurtenant equipment for the transmission and distribution of electric energy to the Village of Berrien Springs, and the inhabitants thereof, and for the transmission and distribution of the same within, through, or across said Village of Berrien Springs, Berrien County, State of Michigan.

The Village of Berrien Springs, Berrien County, State of Michigan, ordains:

SECTION I.

Franchise Grant. Indiana Michigan Power Company, its successors and assigns (hereinafter called "Grantee") is hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Berrien Springs, Berrien County, State of Michigan, lines for the transmission and distribution of electric energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenant equipment (the "Facilities"), to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof for all purposes for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said Village of Berrien Springs, State of Michigan, subject to such reasonable regulation of the placement and operation of the Facilities as the Village Board shall prescribe from time to time and as is permitted under applicable state law.

SECTION II.

Term. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of thirty (30) years from the date of the passage of this Ordinance, but revocable at the will of the Village Board unless approved by vote of the electors.

The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Board of the Village of Berrien Springs hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION III.

Hold Harmless. Said Grantee shall save the Village harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said Facilities, except to the extent arising out of the Village's negligence or willful misconduct. In case any action is commenced against the Grantor on account of the permission granted, the Grantee shall, upon notice, defend the Grantor and save it free and harmless from all loss, cost and damage arising out of such negligent construction, maintenance, and operation.

SECTION IV.

Diligence. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced .

SECTION V.

Electric Service and Franchise Fee.Grantee currently provides unmetered electric service at no charge to Grantor for Grantor's municipal wells 3, 7 and 5 and their respective well pumps¹("Non-Billed Electric Service"). In consideration for the granting of this franchise Grantee shall continue to not charge for such Non-Billed Electric Service at each site provided the load for each such site does not increase by more than twenty percent (20%) over the load Grantor consumes as of the effective date of this Agreement. Grantor shall not charge any franchise fee for the rights granted herein.

SECTION VI.

- (1) **Rights of the Grantor.** The franchise shall be subject to the right of the Grantor to reasonably police and regulate Grantee's use of the Public Ways and to impose such other regulations as may be determined by the council/board to be conducive to the safety, welfare, and accommodation of the public in accordance with state law and the rules and regulations of the Michigan Public Service Commission.

SECTION VII.

Vacation of Rights-of-Way and Relocation of Facilities. The Grantor has the right to vacate any public right-of-way within the Village as well as any right to use same possessed by the Grantee, and/or the Grantor may require the Grantee to relocate its lines and facilities at Grantee's expense when such vacation and/or relocation is made necessary to secure the public health and welfare or is otherwise required by the Grantor in the exercise of a governmental function.

¹ Grantee identifies Wells 3 and 7 as "West Union Street Unit Wells" and Well 5 as "6518 Smith Road"

SECTION VIII.

Jurisdiction. The Grantee shall be and remain subject to all ordinances, rules and regulations of the Grantor 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 shall be construed as a waiver by the Grantee of any or its existing or future rights under state or federal law or a limitation upon the existing or future powers of the Grantor pursuant to its charter or state or federal law.

SECTION IX.

Michigan Public Service Commission.

(A) The Grantee shall, as to all other conditions and elements of service not fixed, be subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric service in the village, to the extent such Commission (or its successors) has such jurisdiction.

SECTION X.

No Burden on Public Ways. Grantee and its contractors, subcontractors and the Grantee's Electric System shall not unduly burden or interfere with the present or future use of any of the Public Ways within the village. Grantee shall erect and maintain its Electric System so as to cause minimum interference with the use of the Public Ways and with the rights or reasonable convenience or property owners. No Public Way shall be obstructed longer than necessary during the work of construction or repair to the Electric System. Grantee's cable, wires, structures and equipment shall be suspended or buried so as to not endanger or injure persons or property in the Public Ways. If the Grantor in its reasonable judgment determines that any portion of the Electric System constitutes an undue burden or interference, Grantee at its expense shall modify its Electric System or take such other actions as the Grantor may determine is in the public interest to remove or alleviate the burden, and the Grantee shall do so within the time period established by the Grantor.

SECTION XI.

Easements. Any easements over or under private property necessary for the construction or operation of the Electric System shall be arranged and paid for by Grantee. Any easements over or under property owned by the Grantor other than the Public Ways shall be separately negotiated with the Grantor.

SECTION XII.

Tree Trimming. Grantee may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the Electric System. Such trimming shall be undertaken in accordance with industry standards and the rules and regulations of the Michigan Public Service Commission. Grantee shall inform Grantor of its planned tree trimming activities prior to undertaking such trimming, but shall be permitted to immediately proceed with all tree trimming necessary to restore electric service and address safety issues.

SECTION XIII.

Pavement Cut Coordination/Additional Fees. Grantee shall coordinate its construction program and all other work in the Public Ways with the Grantor's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing"). Grantee shall meet with the official of the Grantor primarily responsible for the Public Ways at least two times per year to this end.

The goals of such coordination shall be to require Grantee to conduct all known work in the Public Ways in conjunction with or immediately prior to any Street Resurfacing planned by the Grantor, and to prevent the Public Ways from being disturbed by Grantee for a period of years after such Street Resurfacing.

SECTION XIV.

Relocation. If the Grantor requests Grantee to relocate, protect, support, disconnect, remove its facilities because of street or utility work, Grantee shall relocate, protect, support, disconnect, or remove its facilities, at its sole expense, to such alternate route as Grantor, acting reasonably and in good faith, shall designate.

SECTION XV.

Miss Dig. If eligible to join, Grantee shall subscribe to and be a member of "MISS DIG", the association of utilities formed pursuant to 1974 PA 53, as amended (MCL 460.701. etseq.) and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

SECTION XVI.

Employee Identification. All personnel of Grantee or its contractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. Every service vehicle of Grantee, its contractors or subcontractors shall be clearly identified as such to the public.

SECTION XVII.

Successors and Assigns. Wherever in this Ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

SECTION XVIII.

Acceptance. This Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of same.

SECTION XIX.

Effective Date. This franchise shall take effect after its adoption, acceptance and publication as required by law.

SECTION XXI.

Prior Ordinances. All other ordinances or parts of ordinances in conflict with or superseded by this Ordinance are repealed except to the extent that any project, condition, violation or prosecution that was subject to the prior ordinance shall continue.

SECTION XXI.

Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unlawful or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION XXII.


Publication. The Village Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law.

YEAS: Roll call vote: Lonna Johnson, Barry Gravitt, Jack Davis, Sandy Swartz, Jesse Hibler, and President Milt Richter.

NAYS: None.

ABSENT: Trustee Kristin von Maur

Dated: May 20, 2019



Milt Richter, Village President

Ordinance declared adopted:



Sheryl A. Kesterke, Village Clerk

Certification

I hereby certify that the above and foregoing Ordinance was duly adopted by the Village Council of Berrien Springs and published in the Journal Era, a weekly newspaper published in the Village of Berrien Springs, in the issue of said newspaper dated and published on the 22nd day of May, 2019.



Sheryl A. Kesterke, Village Clerk