

ORDINANCE NO. 601

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF LARKSPUR, DOUGLAS COUNTY, COLORADO, TO THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, PURCHASE, ACQUIRE, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN, PLANTS, WORKS, SYSTEMS AND FACILITIES FOR THE GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY BY MEANS OF CONDUITS, WIRES, CABLES, POLES AND STRUCTURES, OR OTHERWISE, ON, OVER, UNDER, ALONG AND ACROSS ALL PUBLIC AND DEDICATED STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, PUBLIC WAYS AND OTHER PUBLIC PLACES IN SAID TOWN OF LARKSPUR, TO SELL, FURNISH AND DISTRIBUTE SAID PRODUCTS TO THE TOWN AND THE INHABITANTS THEREOF.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LARKSPUR, DOUGLAS COUNTY, COLORADO:

ARTICLE I

Whenever the word Town is hereinafter employed, it shall designate the Town of Larkspur, Douglas County, Colorado, the Grantor, and whenever the word Company is used, it shall designate not only the Intermountain Rural Electric Association, a Colorado Corporation, the Grantee, but also its successors and assigns. Whenever the Public Utilities Commission of the State of Colorado is referred to, it shall be deemed to include any authority succeeding to the regulatory powers thereof.

ARTICLE II

Section 1. Grant of Authority. There is hereby granted by the Town to the Company the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within and through said Town, plants, works, systems and facilities for the generation, transmission and distribution of electrical energy for lighting, heating, cooling, power, or other similar utility purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to sell, furnish and distribute any or all of said products to the Town and the inhabitants thereof, by

means of conduits, wires, cables, poles and structures, or otherwise, on, over, under, along and across all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places in the Town, and on, over, under, along and across any extension, connection with or continuation of the same, and on, over, under, along and across all new public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town, in accordance with the terms hereinbelow.

Section 2. Manner of Use - Repair. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places under the supervision of properly constituted Town authority for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to said Town and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the Company shall so locate its substations, transmission and distribution structures, lines, equipment, and conduits within said town 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 whose property adjoins any of the said public and dedicated streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets or public place or any other public improvement, the Company shall repair the same in a workmanlike manner, in accordance with and subject to the then applicable Ordinances of the Town of Larkspur.

The Company shall use due care not to interfere with or damage any water mains, sewers, or other structures in said public and dedicated streets, alleys or other public places.

Section 3. Town Held Harmless. The Company shall so maintain its electric equipment and distribution system as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save and hold the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same.

Section 4. Changes at Company Expense. If at any time it shall be necessary to change the position of any pole, conduit or service connection of the Company to permit the Town to change street grades or make street or sidewalk improvements, such changes shall be made by the Company at its own expense.

Section 5. Use of Facilities by Town. The Town shall have the right, without cost, to use all poles and suitable overhead structures within the Town for the purpose of installing wires thereon for any reasonable Town use; provided, however, that the Company shall assume no liability or expense in connection therewith and such use of said poles and structures shall not interfere in any unreasonable manner with the Company's use of same.

ARTICLE III

Section 1. Rates Regulation. The Company shall furnish electrical energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town or any addition thereto, at the

rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, as are effective from time to time with the Public Utilities Commission of the State of Colorado, all of which collectively are hereinafter referred to as "Company's Tariffs."

Section 2. No Discrimination. 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 corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Section 3. Extensions. Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's Tariffs.

Section 4. Rules and Regulations. The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with, or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to insure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefore, provided that the Company shall keep on file in its local office, available to the public copies of its Rate Schedules, Standards for Service, Rules and Regulations and Service Connection and Extension Policies currently in effect and as are effective from time to time with the Public Utilities Commission of the State of Colorado.

ARTICLE IV

Section 1. Franchise Payment. As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy, occupation and license taxes, or other taxes on the rights to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or business), the Company shall pay to the Town, for the period beginning April 1, 1981, to the termination of this franchise a sum equal to three percent (3%) of the first Ten Thousand Dollars (\$10,000.00) of annual gross revenue derived from the sale of electric energy to each customer at any one location and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of electric energy in excess of Ten Thousand Dollars (\$10,000.00) to each customer for each such service, so used at any one location; provided, however, there shall be excluded from all of such gross revenue, all amounts paid to the Company by the Town for electrical energy furnished. The term "gross revenue," as used herein shall be construed to mean any revenue derived under authorized rates, temporary or permanent, within the Town from the sale of electrical energy after the net write-off of uncollectable accounts and corrections of bills theretofore rendered, and in the event that the gross revenue of the Company for any period of time during the term of this franchise is subsequently reduced by virtue of a refund to any of the customers of the Company upon which the above referred to franchise payment is calculated and as a result thereof the Company has paid in excess of the percent of its gross revenue provided herein as so adjusted for any such period of time, the Company shall be entitled to a refund from the Town of all said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund.

Payments shall be made as follows:

For each year of the term hereof, the Company shall, on or before March 31 of each year, make an estimate of the total franchise payments to be paid to the Town for the current year, and shall pay one-fourth (1/4) of said estimated amount on or before March 31, June 30, September 30 and December 31. Adjustment for any differences from payment calculated on actual revenue shall be made with the March 31 payment in the following year.

Payments for the portions of the initial and terminal years of this franchise shall be made on the basis of revenue as above provided for the months and portions of months in which this franchise is in effect. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Clerk and/or any committee or auditor appointed by the Board of Trustees of said Town shall have access to the books of said Company for the purpose of checking the gross revenue received for operations within said Town.

In the event that the Company should during the term of this franchise, increase its franchise payments to any City or Town in the Counties of Adams, Arapahoe and Jefferson in which it supplies electric service under a franchise, by reason of an increase in the percentage payments on revenue or a different basis of determining revenue excluded from the percentage payment, the same change or changes to provide increased franchise payments shall be placed in effect in the Town.

ARTICLE V

Section 1. Term - Effective Date. This ordinance shall become effective, as provided by law, thirty (30) days after its publication following final passage, upon acceptance in writing by the Company within said period and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty-five (25) years from and after effective date.

Section 2. Removal. Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted same, it is hereby granted the right to enter upon the public and dedicated streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, conduits, cables, poles and wire, or equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said conduits, cables, poles, wire and equipment, the Company shall, at its own expense and in a workmanlike manner, refill, repair, resurface and return to its original state any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public or private places after the removal of conduits, poles or other structures.


Section 3. Police Power Reserved. The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

Section 4. Assignment. Nothing in this Ordinance shall be so construed as to prevent the Company from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this Ordinance; subject to Town's approval, not to be unreasonably withheld. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee.

Section 5. Acceptance by Company. It is hereby expressly agreed that this franchise is granted subject to all of the provisions of the laws of the State of Colorado, and that the Company shall accept this Franchise by a writing filed with the Town Clerk and the Town shall pass this Ordinance within sixty (60) days from and after the date of acceptance by the Company provided, however, that such time for the passage of this Ordinance may be extended by the Board of Trustees of said Town.

INTRODUCED, READ AND ORDERED PUBLISHED, the 28th day of January, A.D. 1981, by a vote of the Board of Trustees of 5 for and 0 against.


PASSED, ADOPTED AND APPROVED, THIS 19th day of March, A.D., 1981 by a vote of the Board of Trustees of 6 for and 0 against.



Mayor

(S E A L)

ATTEST:



Town Clerk

I hereby certify that this Ordinance No. 601, an Ordinance granting a franchise by the Town of Larkspur, Douglas County, Colorado, to the Intermountain Rural Electric Association was adopted by the Board of Trustees of the Town of Larkspur on March 19, 1981.

Dated: March 19, 1981.

Dean Sprigg
Town Clerk
Town of Larkspur