

LEGAL NOTICE

ORDINANCE NO. 2, SERIES 2024

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE FROM THE TOWN OF UPTON, WESTON COUNTY, WYOMING, TO BLACK HILLS POWER, INC., A SOUTH DAKOTA CORPORATION DOING BUSINESS IN THE STATE OF WYOMING AS BLACK HILLS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AN ELECTRIC UTILITY SYSTEM WITHIN THE TOWN OF UPTON, WYOMING, FOR PROVIDING ELECTRIC SERVICE TO THE TOWN OF UPTON AND THE INHABITANTS THEREOF AND ESTABLISHING THE TERMS AND CONDITIONS OF SAID FRANCHISE, INCLUDING THE EFFECTIVE DATE THEREOF.

WHEREAS, the Town of Upton, Weston County, Wyoming (hereafter "Town"), and Black Hills Power, Inc., a South Dakota corporation, currently operating its electric utility under the name of Black Hills Energy ("Company"), previously entered into an agreement dated July 23, 1979, wherein Company agreed to manage and operate the electrical system of the Town ("Agreement") and, in conjunction therewith, Town granted to Company a nonexclusive franchise for a period of 20 years, which franchise expired on December 4, 1999; and

WHEREAS, the Agreement and nonexclusive franchise was extended on September 23, 1998, expiring December 4, 2024, a true and correct copy of which is attached hereto and incorporated herein by this reference;

WHEREAS, Town desires to extend the term of the Agreement and grant a new franchise to Company; and

WHEREAS, Company desires to extend the term of the Agreement and receive a new franchise from Town.

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

Section 1. Town does hereby grant to Company, and to its successors and assigns, a nonexclusive right and franchise for a term beginning on the effective date of this Ordinance and extending until December 4, 2049, for the purpose of operating an electric utility system; and in connection therewith, Town does hereby grant to Company the privilege to locate, construct, maintain, and operate in, on, and under the present and future streets, alleys, avenues, or other public places or ways within the limits of Town an electric light and power system to generate, transform, transmit, and distribute electric energy for light, heat, and power and other uses, including the right to erect and maintain works, poles, wires, and necessary and appurtenant equipment and facilities therefor for the term of this grant and to provide the necessary electric energy for light, heat, power, and other uses for the lighting of streets, public buildings, or other requirements of the Town; all of the foregoing subject to the limitations, terms, and conditions herein specified, the laws of the State of Wyoming, and further subject to the making of the payments herein specified. Town reserves the right at the end of each ten (10) year period from and after December 4, 2024, to renegotiate the provisions of this ordinance with Black Hills Energy, its successors or assigns, and in the event that such negotiations shall not have resulted in a mutually agreeable amendment to said ordinance within a period of ninety (90) days from the end of such ten (10) year period, then and in such event, Town reserves the right to cancel this franchise by repeal of this ordinance within sixty (60) days following the said ninety (90) day period. If no renegotiation is instituted by Town within said ninety (90) day period or if the franchise is not canceled within said sixty (60) day period, this franchise shall continue in full force and effect.

Section 2. Company shall erect and maintain all such facilities in accordance with good engineering practices and in such manner as not to interfere with the use of said streets for travel, and whenever it shall be necessary in the erection of such facilities to dig or in any manner to disturb or interfere with any of said streets, Company shall: (a) obtain and pay for all required permits from Town and fully comply with all applicable ordinances, rules, and regulations of Town; and (b) within a reasonable time after completion of work restore such streets to as good a condition as the same were in before the construction or disturbance and remove all construction debris from said streets. If at any time it shall be necessary to relocate any pole, conduit, or other facility of Company to permit Town to make any public improvement or to build any public project, such relocation shall be made by Company at its own expense.

Section 3. For and in consideration of the rights and privileges herein granted, Company, its successors and assigns, shall at all times during the term of this grant, maintain a proper and efficient electric power and light system for the purpose of supplying Town and its inhabitants with electric energy at such rates as shall be reasonable and fixed and determined in the manner provided by law.

Section 4. Company shall have the right and privilege at its sole cost, risk, and expense of trimming all trees which overhang said streets in such a manner and to such extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its facilities; providing no such trees shall be trimmed or cut back further than may be necessary to prevent such interference and to allow the proper operation and maintenance of said facilities, and further providing that Company shall fully comply with all applicable ordinances, rules, and regulations of Town.

Section 5. Company shall maintain an office within the town of Upton, Wyoming, staffed with at least one qualified service and/or maintenance person during the term of the Agreement. However, in the event the cost of maintaining this office and the qualified service and/or maintenance person becomes unduly burdensome to Company, it may request that the Town modify or delete this requirement. The Town shall then review the evidence presented by Company in support of its request and shall render its decision within 60 days. The Town shall not be obligated to grant Company's request, but it shall make a good faith decision based upon the evidence presented.

Section 6. As a consideration for the use of the streets, alleys and public places within the Town of Upton, and to reimburse the Town for part of the costs of maintaining and repairing the streets and alleys used by Company under this franchise, Company shall assess, effective the first billing cycle after this franchise becomes effective, to residential and commercial customers within Town, a franchise fee equivalent to one percent (1%) of the Company's gross revenues as defined herein. Company shall pay to Town an amount equal to two percent (2%) of Company's Gross Revenues as defined herein.

Payments shall be made four times each year by the last business day of the month in January, April, July and October and will cover the previous three-month period. The term "Gross Revenue" shall mean and be construed as Company's gross revenue derived from the sale of electrical energy to customers within the town limits of the Town of Upton; provided, however, that there shall be excluded from all such gross revenue (a) the amount received by Company from town, county, state, school and federal agencies for electrical purposes; (b) any state, town, county or other governmental entity excise, sales or use tax levied on the provision of electrical energy within the limits of Town. The Company shall also be allowed to reduce said gross revenue by subtracting any uncollectible accounts from the gross revenue.

During the term of this Ordinance, and so long as Company continues to make the payments herein specified, Town shall not assess any additional license or occupation tax or levy any other excise tax upon Company; provided, however, that this provision shall not apply to ad valorem taxes levied against Company's property located within the Town.

Town shall have the right at its sole expense upon the provision of reasonable notice to examine the books and records of Company which are subject to the provisions of this Ordinance for the purpose of verifying the accuracy of the payments made herein.

Section 7. Company shall indemnify and hold harmless the Town and its officers, employees, and officials against and from any and all claims, and all damages, costs, and expenses to which it or they may be subjected by reason of any acts of negligence of Company, or its agents or servants, in any manner arising out of the construction, maintenance, or operation of any property of Company in or on any of said streets.

Section 8. This Ordinance, upon becoming effective, repeals all prior franchise ordinances in conflict herewith.

Section 9. If any portion of this Ordinance is held or found to be invalid, the remainder of this Ordinance shall continue to be in full force and effect.

Section 10. Company shall give written acceptance of this franchise by filing same with the Town Clerk within thirty (30) days after the effective date of this Ordinance. If Company fails to file such written acceptance within the time provided or if Company fails to abide by any of the terms of this Ordinance, the rights, authority, and franchise hereby conferred shall expire, terminate, and be of no further effect.

Section 11. This Ordinance shall become effective as of the first day of the first month after passage and upon publication in accordance with the law.

Section 12. The term of the Agreement previously entered into by and between Town and Company is hereby extended until December 4, 2049 ("Extended Term") and all the terms and conditions of the Agreement shall remain the same during the Extended Term.

The Town shall enter into an agreement extending and amending the Agreement consistent with this Ordinance.

Passed on first reading: September 9, 2024

Passed on second reading: October 8, 2024

Passed, Approved, and Adopted on third reading this 12th day of November, 2024.

Published: 11/21/2024

Effective Date: 12/04/2024.

TOWN OF UPTON
Nicholas Trandahl, Mayor

Attest: Kelley Millar, Clerk/Treasurer

ACCEPTANCE OF FRANCHISE

The attached franchise contained within Ordinance No. 2, Series 2024 of the Town of Upton, State of Wyoming, is hereby accepted by Black Hills Power, Inc. this 14th day of November, 2024.

BLACK HILLS POWER, INC.
By: Mike Pogany
Its: General Manager

Publish: November 21, 2024.