FOREST TOWNSHIP ORDINANCE #9

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO DTE-CO ENERGY TO USE LOCAL PUBLIC WAYS AND DO LOCAL ELECTRICAL BUSINESS

WHEREAS, DTE Co-Energy, Detroit, Michigan successors and assigns, seek a public utility franchise to use the highways, streets, alleys, bridges, and other public places for the transmission of electricity, and to do local electric business in the Township of Forest, and

WHEREAS, the Township of Forest, Missaukee County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and MCL 460.501, to grant public utility franchise by Ordinance.

NOW, THEREFORE, Township of Forest, Michigan Ordains:

Section 1. Grant of Non-Exclusive Rights

A. Term. Township of Forest grants to DTE Co-Energy, its successors and assigns (Grantee), subject to the terms and conditions set forth below, the Non-Exclusive right, power and authority to construct, maintain and distribute electrical services through electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter “Electric System”) presently owned by Consumers Energy and/or the retail customer located within the jurisdiction of the Township, so as to retail wheel electricity under the Direct Access Program and subject to the conditions set forth herein. This grant is to do local electric business in the Township of Forest, Missaukee County, Michigan for the period of five (5) years.

B. Township of Forest further grants to DTE-Co Energy, its successors and assigns (Grantee), subject to the terms and conditions set forth below, the right, power and authority to construct of maintain such electrical equipment and appliances on, along, across and under the highways, streets, alleys, and bridges (hereafter “Public Ways”), necessary to connect DTE customers, not then served with electrical power, to the nearest wire, mast, cross arm, transformer, wire, or other electrical appliance existing at the time of connection.

C. Lease. Grantee shall not lease or sublease any portion of its electrical system within the Township to a person who by law is required to obtain the Township’s permission or consent to transact business in the Township and who lacks such permission or consent.

Section 2. Use of Public Rights-of-Way by Grantee

A. 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 Township. 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 of 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 Township 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 Township or County Road Commission 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 Township.

B. Restoration of Public Ways. Grantee and its contractors and subcontractors shall immediately restore, at Grantee’s sole expense and in a manner approved by the Township and County Road Commission, any portion of the Public Ways that is in any way disturbed, damaged, or injured by
the construction, operation, maintenance or removal of the Electric System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractor or subcontractors fail to make such repair within the time specified by the Township or County Road Commission, the Township or County Road Commission shall be entitled to complete the repair and Grantee shall pay the costs to the Township or County Road commission for such repair.

C. 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 use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by Grantee and a violation of this Agreement. Any easements over or under property owned by the Township other than the Public Ways shall be separately negotiated with the Township.

D. 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. Grantee shall minimize the trimming of trees to trimming only those that are essential to maintain the integrity of its Electric System. No trimming shall be done in the Public Ways without previously informing the Township.

E. Pavement Cut Coordination/Additional Fees. Grantee shall coordinate its construction program and all other work in the Public Ways with the Township’s or County Road Commission’s program for street construction, rebuilding, resurfacing and repair (collectively, “Street Resurfacing”). Grantee shall meet with the official of the Township or County Road Commission primarily responsible for the Public Ways at least twice 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 Township or County Road Commission, and to prevent the Public Ways from being disturbed by Grantee for a period of two (2) years after such Street Resurfacing.

F. Marking. Grantee shall mark its Electric System as follows: Aerial portions of the Electric System shall be marked with a marker on its lines on alternate poles which shall state Grantee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Electric System shall have (1) a conducting wire placed in the ground at least several inches above the Grantee’s cable or wire (if such cable or wire is non-conductive), (2) at least several inches above that a continuous colored tape with Grantee’s name and a toll-free number and a statement to the effect that there is buried cable beneath, and (3) stakes or other appropriate above-ground markers with Grantee’s name and a toll-free number and indicating that there is buried cable below.

G. Compliance with Laws. Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Electric System, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any ordinance requiring the installation of additional conduit when Grantee installs underground conduit for its Electric System). Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Grantee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

H. Street Vacation. If the Township or County Road Commission vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee’s facilities in the vacated Public Way, Grantee agrees, as a condition of this
Agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Township, County Road Commission or a court of competent jurisdiction. Grantee shall relocate its facilities to use alternative route as the Township or County Road Commission, acting reasonably and in good faith, shall designate.

I. Relocation. If the Township requests Grantee to relocate, protect, support, disconnect, or 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 Township, acting reasonable and in good faith, shall designate.

J. Public Emergency. The Township shall have the right to sever, disrupt, dig up or otherwise destroy facilities of Grantee, without any prior notice, if such action is deemed necessary by the Township Supervisor, Police Chief, or Fire Chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, possess an immediate threat to the lives or property of the citizens of the Township, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accident, explosions, major water main breaks, hazardous material spills, etc. Grantee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the Township.

K. Miss Dig. If eligible to join, Grantee shall subscribe to and be a member of “MISS DIG” the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

L. Use of Existing Facilities: Compensation to Township. Grantee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles, or other facilities unless expressly authorized by the Township. Where existing utility wiring is located underground, either at the time of initial construction or subsequent thereto. Grantee’s Electric System shall also be located underground unless otherwise expressly authorized by the Township. In the event Grantee desires to utilize existing poles, conduits or other facilities owned by the Township, Grantee shall be obligated to pay the existing standard charge for attachment to, placement in, or other use of those facilities.

To the extent that Grantee chooses to construct its own utility wiring or other new facilities, Grantee agrees to compensate the Township for use of the public rights of way. Unless otherwise agreed by the Township and Grantee, the compensation shall be paid to the township and shall be not less than $0.30 per lineal foot per year of wiring or other facilities installed.

M. Underground Relocation. If Grantee has its facilities on Consumers Energy Company’s or any other public utility company’s above ground utility poles and the owner of said poles relocates its facilities to an underground conduit, Grantee shall relocate its facilities underground in the same location.

N. Pole/Conduit License Agreement Notification. If Grantee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers Energy Company or other entity, then Grantee shall notify the Township Supervisor in writing within 14 days and rights under this franchise shall terminate.
Section 3. No Township Liability: Indemnification.

A. Township Not Liable. The Township, and its agents, employees, and contractors, shall not be liable to Grantee or Grantee’s customers for any interference with or disruption in the operation of Grantee’s Electric System, or the provision of service over or through the Electric System, or for any damages arising out of Grantee’s use of the Public Ways.

B. Indemnification. As part of the consideration of this Agreement, Grantee shall defend, indemnify, protect and hold harmless the Township, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the alleged fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.

C. Assumption of Risk. Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Township-owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Township against and from any claim asserted or liability imposed upon the Township for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Electric System or Grantee’s failure to comply with any federal, state or local statute, ordinance or regulation.

D. Notice Cooperation and Expenses. Township shall give Grantee prompt notice of the making of any claim or the commence of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Township attorney, and the actual expenses of Township’s agents, employees or expert witnesses, and disbursements and liability assumed by Township in connection with such suits, actions, or proceedings.

Section 4. Franchise Not Exclusive.

The rights, power and authority granted herein are not exclusive and this franchise may be revoked with or without cause upon 60 days written notice to Grantee.

Section 5. Township Jurisdiction

Grantee shall be and remain subject to all Ordinances, rules and regulations of the Township 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 herein shall be construed as a waiver by Grantee of any of its existing or future rights under Michigan or Federal law or a limitation upon the existing or future powers of the Township pursuant to its Charter or Michigan or Federal law.
Section 6. Michigan Public Service Commission

A. Jurisdiction. Grantee shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to electric service by the Michigan Public Service Commission, or its successor bodies to the extent such jurisdiction applies.

B. Filing. Grantee shall provide the Township with copies of all documents which Grantee sends to the Michigan Public Service Commission and copies of all orders, decision, or correspondence Grantee receives from the Public Service Commission. Grantee shall permit Township inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 7. Permit Fees

Within sixty (60) days of the effective date of the within ordinance, Grantee shall pay to the Township the Township’s cost of processing the adoption of the within Ordinance including among others required publishing expenses and legal fees.

Section 8. Effective Date

This Ordinance shall take effect thirty (30) days after adoption by the Township Board, provided, however, it shall cease and be of no effect after thirty (30) days from its adoption unless and until within said period Grantee files an acceptance in writing with the Township Clerk.

Township of Forest - Missaukee County

By: [Signature]

Catherine Molitor
Forest Township Clerk
4301 West Sanborn Road
Lake City MI 49651
Township of Forest, and

WHEREAS, the Township of Forest, Missaukee County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and MCL 460.501, to grant public utility franchise by Ordinance.

NOW THEREFORE, Township of Forest, Michigan ordains:

Section 1. Grant of Non-Exclusive Rights

A. TERM. Township of Forest grants to DTE Co-Energy, its successors and assigns (Grantee), subject to the terms and conditions set forth below, the Non-Exclusive right and authority to construct, maintain and distribute electrical services through electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter "Electric System") presently owned by Consumers Energy and/or the retail customer located within the jurisdiction of the Township, so as to retail wheel electricity under the Direct Access Program and subject to the conditions set forth herein. This grant is to do local electric business in the Township of Forest, Missaukee County, Michigan for the period of five (5) years.

B. Township of Forest further grants to DTE Co-Energy, its successors and assigns (Grantee), subject to the terms and conditions set forth below, the right, power and authority to construct, maintain such electrical equipment and appliances on, along, across and under the highways, streets, alleys, and bridges (hereafter "Public Ways") necessary to connect DTE customers, not then served with electrical power, to the nearest wire, mast, cross arm, transformer, wire, or other electrical appliance existing at the time of connection.

C. LEASE. Grantee shall not lease or sublease any portion of its electrical system within the Township to a person who by law is required to obtain the Township's permission or consent to transmit business in the Township and who lacks such permission or consent.

Section 2. Use of Public Rights-of-Way by Grantee

A. 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 Township. 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 of 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 Township 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 Township or County Road Commission may determine in the public interest to remove or alleviate the burden, and the Grantee shall do so within the time period established by the Township.

B. RESTORATION OF PUBLIC WAYS. Grantee and its contractors and subcontractors shall immediately restore, at Grantee's sole expense and in a manner approved by the Township and County Road Commission, any portion of the Public Ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Electric System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractor or subcontractors fail to make such repair within the time specified by the Township or County Road Commission, the Township or County Road Commission shall be entitled to complete the repair and Grantee shall pay the costs to the Township or County Road commission for such repair.

C. 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 use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by Grantee and a violation of this Agreement. Any easements over or under property owned by the Township other than the Public Ways shall be separately negotiated with the Township.

D. TREE TRIMMING. Grantee may trim trees upon and overhanging the Public Ways so continued on page 21
continued from page 20

to the effect that there is buried cable below, and (3) stakes or a conductor placed in the ground in the same location.

Grantee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

If the Township or County Road Commission vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, Grantee agrees, as a condition of this Agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Township, County Road Commission or a court of competent jurisdiction.

Grantee shall relocate its facilities to use alternative route as the Township or County Road Commission, acting reasonably and in good faith, shall designate.

1. RELOCATION. If the Township requests Grantee to relocate, protect, support, disconnect, or 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 Township, acting reasonably and in good faith, shall designate.

J. PUBLIC EMERGENCY. The Township shall have the right to sever, disrupt, dig up or otherwise destroy facilities of Grantee, without any prior notice, if such action is deemed necessary by the Township Supervisor, Police Chief, or Fire Chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, possess an immediate threat to the lives or welfare of the citizen of the Township, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accident, explosion, major water main breaks, hazardous material spills, etc. Grantee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the Township.

K. MISS DIG. If eligible to join, Grantee shall subscribe and be a member of “MISS DIG” the association of utilities formed pursuant to Act 33 of the Public Act of 1974, as amended, MCL 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

L. USE OF EXISTING FACILITIES: COMPENSATION TO TOWNSHIP. Grantee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles, or other facilities wherever practicable, and shall not construct or install any new, different, or additional poles, or other facilities unless expressly authorized by the Township. Where existing utility wiring is located underground, either at the time of initial construction or subsequent thereto. Grantee's Electric System shall also be located underground unless otherwise expressly authorized by the Township. In the event Grantee desires to utilize existing poles, conduits or other facilities owned by the Township, Grantee shall be obligated to pay the existing standard charge of attachment to, placement in, or other use of those facilities.

To the extent that Grantee chooses to construct its own utility wiring or other new facilities, Grantee agrees to compensate the Township for use of the public rights of way. Unless otherwise agreed by the Township and Grantee, the compensation shall be paid to the township and shall be not less than $.30 per lineal foot per year of wiring or other facilities installed.

M. UNDERGROUND RELOCATION if Grantee has its facilities on Consumers Energy Company's or any other public utility company's above ground utility poles and the owner of said poles relocates its facilities to an underground conduit, Grantee shall relocate its facilities underground in the same location.

N. POLE/CONDUIT LICENSE AGREEMENT NOTIFICATION. If Grantee forfeits or otherwise loses its rights under this pole/conduit license agreement with Consumers Energy Company or other entity, then Grantee shall notify the Township Supervisor in writing within 14 days and rights under this franchise shall terminate.

Section 3. No Township Liability.
ity: Indemnification.

A. TOWNSHIP NOT LIABLE. The Township, and its agents, employees, and contractors, shall not be liable to Grantee or Grantee’s customers for any interference with or disruption in the operation of Grantee’s Electric System, or the provision of service over or through the Electric System, or for any damages arising out of Grantee’s use of the Public Ways.

B. INDEMNIFICATION. As part of the consideration of this Agreement, Grantee shall defend, indemnify, protect and hold harmless the Township, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors or assigns, but only to the extent of the alleged fault of the Grantee, its officers, agents, contractors, successors, or assigns.

C. ASSUMPTION OF RISK. Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Township-owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Township against and from any claim asserted or liability imposed upon the Township for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Electric System or Grantee’s failure to comply with any federal, state or local statute, ordinance or regulation.

D. NOTICE AND EXPENSES. Township shall give Grantee prompt notice of the making of any claim or the commence of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Township attorney, and the actual expenses of Township’s agents, employees and expert witnesses, and disbursements and liability assumed by Township in connection with such suits, actions, or proceedings.

Section 4. Franchise Not Exclusive

The rights, power and authority granted herein are not exclusive and this franchise may be revoked with or without cause upon 60 days written notice to Grantee.

Section 5. Rates

Grantee shall be entitled to charge the inhabitants of the Township for Electricity furnished at the rates approved by the Michigan Public Service Commission, to the extent it or its successors, have authority and jurisdiction to fix and regulate electrical rates and promulgate rules regulating such service in the Township. Such rates and rules shall be subject to review at any time upon petition being made by either the Township acting through the Township Board or by Grantee.

Section 6. Township Jurisdiction

Grantee shall be and remain subject to all Ordinances, rules and regulations of the Township 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 herein shall be construed as a waiver by Grantee of any of its existing or future rights under Michigan or Federal law or a limitation upon the existing or future powers of the Township pursuant to its Charter or Michigan or Federal law.

Section 7. Michigan Public Service Commission

A. JURISDICTION. Grantee shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to electric service by the Michigan Public Service Commission, or its successor bodies to the extent such jurisdiction applies.

B. FILING. Grantee shall provide the Township with copies of all documents which Grantee sends to the Michigan Public Service Commission and copies of all orders, decision, or correspondence Grantee receives from the Public Service Commission. Grantee shall permit Township continued on page 22
Legal Notices

continued from page 21

inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 8. Permit Fees

Within sixty (60) days of the effective date of the within ordinance, Grantee shall pay to the Township the Township’s cost of processing the adoption of the within Ordinance including among others required publishing expenses and legal fees.

Section 9. Effective Date

This ordinance shall take effect thirty (30) days after adoption by the Township Board, provided, however, it shall cease and be of no effect after thirty (30) days from its adoption unless and until within said period Grantee files an acceptance in writing with the Township Clerk.

Township of Forest
Missaukee County

by s/ Catherine Molitor
Catherine Molitor
Forest Township Clerk
4301 West Sanborn Road
Lake City, MI 49651

ADDENDUM TO FOREST TOWNSHIP ORDINANCE #9

THE term “Electric System” as it is used in Section 2, Paragraphs B, F, G and Section 3, Paragraphs A and C was not meant to make DTE-CoEnergy jointly responsible for Consumers Power Company’s system.

DTE-CoEnergy merely wants to transmit energy over existing or to be constructed equipment owned by the utility or by customers within the township. To the extent that DTE-CoEnergy wishes to install any equipment for our benefit or that of our customers, we will coordinate such activity with the township and Consumers Power Company.

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2/26