

VILLAGE COUNCIL
VILLAGE OF LAKEVIEW
MONTCALM COUNTY, MICHIGAN

Council Member Earhart, supported by Council Member Schottle, moved the adoption of the following ordinance:

ORDINANCE NO. 00-3
AN ORDINANCE GRANTING TO DTE ENERGY A FRANCHISE TO
MARKET AND SUPPLY ELECTRICITY

THE VILLAGE OF LAKEVIEW ORDAINS:

Section 1. Purpose and Scope. This Ordinance constitutes the grant of a franchise from the Village of Lakeview (the "Village") to DTE Energy Marketing, Inc., a Michigan corporation (the "Grantee"), to market and supply electricity through and over existing and future electrical lines owned and operated by another authorized public utility and to conduct a local electric business as an electric power marketer and third-party supplier in the Village. The grant of a franchise is required because, among other reasons, Article VII, Section 29 of the Michigan Constitution of 1963 provides that a public utility may not use the streets, highways or other public rights-of-way within the Village for a public utility facilities or otherwise transact business without first obtaining a franchise and the because Act No. 3 of the Public Acts of 1895, as amended ("the Village Charter"), grants to the Village Council control and supervision over all public rights-of-way in the Village.

Section 2. Term. The Village grants the right, power and authority to the Grantee to market and commercially use existing and future electric lines consisting of towers, masts, poles, cross arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical facilities for the purpose of supplying, transmitting, transforming and distributing electricity and conducting a local electric business (the "Electrical System") on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places (referred to collectively as "public rights-of-way") in the Village for a period of thirty (30) years.

Section 3. Consideration. In consideration of the Village's grant of this franchise, Grantee shall reimburse the Village for actual expenses incurred by it or its legal counsel in an amount not to exceed One Thousand Dollars (\$1,000) which amount shall be payable to the Village within thirty (30) days of the effective date of this Ordinance and shall faithfully perform all things required by the terms of this franchise.

Section 4. Right-of-Way Fee. In the event that Grantee or any subsidiary or affiliated entity of Grantee pays a franchise fee, charge or similar payment of any kind to any municipality in the State of Michigan as a condition, or in consideration of, the right to transact a local utility business therein, Grantee shall notify the Village in writing of the details of said fee or charge within sixty (60)

days of the effective date of the same. In the event such a fee or charge is paid to another municipality, the Grantee shall also pay a comparable fee to the Village on the same basis, retroactive to the date on which such fee or charge was first paid to the other municipality. A charge or tax imposed pursuant to Act No. 100 of the Public Acts of 1990, as amended, shall not be deemed a franchise fee, charge of similar payment for the purpose of this Section 13.

Section 5. Conditions.

(a) Construction: As an electric power marketer and third-party supplier of electricity, Grantee will not directly transmit electricity, nor impair or attempt to control or occupy any public rights-of-way, nor engage in any construction in the any public rights-of-way without the express written consent of the Village. In the event the Village consents to such construction, no public rights-of-way used by Grantee shall be obstructed longer than necessary during the work of construction or repair (the "work") and shall be restored to the same good order and condition as when the work was commenced. The Grantee shall have the right to trim trees that are located within the public rights-of-way, if necessary, in the conducting of such business subject, however, to prior approval and supervision by the highway authorities of the Village.

(b) Condition of Highways Streets and Alleys: Grantee's Electrical System and associated appurtenances shall be neat and slightly and shall not unnecessarily interfere with the use of the public rights-of-way. Grantee's Electrical System shall be suspended or buried so as not to endanger or injure persons or property in the public rights-of-way.

(c) Notice: Grantee shall give forty-eight (48) hours written notice to the Village before undertaking any work in the Village involving the public rights-of-way. The notice shall state the intended duration of any rights-of-way obstruction, which obstruction shall not continue for more than four (4) hours beyond the stated time unless the Village grants an extension of time.

(d) Emergency: Nothing herein, shall prelude the Grantee from immediately commencing construction to repair work resulting from a storm or other Act of God or when deemed necessary to prevent danger to life or property and, in such case, the Grantee shall notify the Village of the construction or repair work as soon as reasonably practical.

(e) Service. The Village may establish reasonable standards of service, prevent unjust discrimination in service, and impose any other regulations as may be determined by the Village to be conducive to the health, safety and welfare of the public.

(f) Relocation. Upon request of the Village for a public improvement project, the Grantee shall relocate and install components of the Electrical System within the public rights-of-way at no charge to the Village.

(g) Local Provisions. The Grantee's entitlement to rely on this franchise shall, during the term of the franchise, remain subject to the Grantee's compliance with all local laws, ordinances and

Village Charter provisions of the Village including, without limitation, Chapter VII, Section 7 of the Village Charter.

Section 6. Payment Cut Coordination. On or before March 31 each year, the Grantee shall provide the Village with a report of any planned work scheduled to be undertaken by the Grantee within the public rights-of-way within the succeeding twelve-month period. The Grantee shall, at the written request of the Village, coordinate its scheduled work with public construction and repair of public rights-of-way and the public improvements located thereon. Grantee shall reasonably attempt to provide updated reports when such are applicable.

Section 7. Hold Harmless. The Grantee shall indemnify and hold harmless the Village and its officers, agents and employees from any and all losses, costs, judgements, damages and expenses to which one or more may be subject by reason of the Grantee's negligent construction, maintenance, repair or operation of the structures or equipment, or the Grantee's use and occupation of the public rights-of-way hereby authorized, or by reason of the Grantee's default or negligent omission. In the event an action is commenced against the Village or its officers, agents or employees resulting from the exercise by Grantee of its privileges under this Ordinance, the Grantee shall, upon notice, defend and save them free and harmless from all losses, costs and damages arising out of such negligent construction and maintenance, including court costs and reasonable attorney fees.

Section 8. No Liability. Neither the Village nor its officers, agents, employees or contractors, shall be liable to Grantee or to Grantee's customers for any interference with or disruption in the operation of Grantee's Electrical System, or for any damages arising out of Grantee's use of the public rights-of-way, except for the sole negligence or willful misconduct of the Village, its agents, officers, employees or contractors.

Section 9. Rates. The Grantee shall be entitled to charge the inhabitants of the Village for electric energy furnished therein the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regarding such service in the Village are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either the Village or the Grantee to the Michigan Public Service Commission.

Section 10. Revocation. The franchise granted by this Ordinance is subject to revocation at will by the Village upon sixty (60) days written notice.

Section 11. Franchise Not Exclusive. The rights, power, and authority herein granted are not exclusive, and the Village may grant similar rights and powers to any other person or entity with impunity from Grantee.

Section 12. Insurance. Grantee shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its exercise of the rights granted by this franchise: Comprehensive General Liability, including Completed Operations Liability, Independent

Contractors Liability, Contractual Liability coverage and coverage for X, C and U hazards in an amount not less than One Million Dollars (\$1,000,000.00).

The Village shall be named as an additional insured on all such policies. All insurance policies shall provide that they shall not be cancelled or modified unless thirty (30) days prior written notice is given to the Village. If so requested by the Village, Grantee shall provide the Village with a certificate of insurance evidencing such coverage and maintain a current certificate on file with the Village.

Section 13. Interpretation. Nothing in this Ordinance shall be construed to alienate the title of this public in and to any highway, street, alley or public place. Nothing in this Ordinance shall be construed in any manner as a surrender by the Village of its legislative power with respect to the subject matter of this Ordinance or with respect to any other matter or in any matter limiting the right of the Village to lawfully regulate to use of any highway, street, alley or public place in the Village.

Section 14. No Assignment. Grantee shall not assign, transfer or convey this franchise or any interest in this franchise to any other person, firm or corporation without prior written approval of the Village. The Village shall not unreasonably withhold its consent to an assignment.

Section 15. Compliance with Laws. Grantee shall be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric services in the Village. Grantee shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of the Grantee's Electrical System, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Village or other government entity as may be required by law.

Section 16. Acceptance by Grantee. Prior to adoption by the Village Council, this Ordinance shall be submitted to the Grantee for its review and approval and the Village must receive written confirmation from the Grantee that the terms and conditions of this franchise are acceptable and that the Grantee agrees to be bound by the same.

Section 17. Effective Date. This Ordinance shall take effect upon its publication in accordance with the Village Charter.

YEAS: Earhart, McElhinny, Lund, Winter, Schottle, Burlison

NAYS: None

ABSENT: Rasmussen

ORDINANCE NO. 00-3 ADOPTED.

By: _____
Lee Burlison, President

By: _____
Wally Delamater, Clerk

I, Wally Delamater, the Clerk for the Village of Lakeview, hereby certify that the foregoing is a true and accurate copy of an ordinance adopted by the Village Council of the Village of Lakeview at a regular meeting of the Council held on June 12, 2000.

Wally Delamater, Village Clerk

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