

ORDINANCE 823

AN ORDINANCE GRANTING TO LINN COUNTY RURAL ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE TWENTY-FIVE YEAR FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE AN ELECTRIC SYSTEM IN THE CITY OF WEST BRANCH, IOWA, AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND REQUIRING SAID COMPANY TO PAY A FRANCHISE FEE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST BRANCH, CEDAR COUNTY, IOWA:

Section 1. Grant of Franchise. There is hereby granted to Linn County Rural Electric Cooperative, its successors and assigns (the "Company"), the right and franchise, from and after the effective date of this ordinance codified in this chapter, to acquire, construct, operate and maintain in the City of West Branch, Iowa (the "City"), as provided herein, the necessary facilities for the distribution, transmission and sale of electricity for public and private use and to construct and maintain, over, upon, across and under the streets, highways, avenues, alleys and bridges, the necessary facilities, fixtures and equipment for such purposes. The franchise will be effective for twenty-five years beginning with the effective date of this ordinance. Either party may exercise an option to re-evaluate or amend the franchise by providing the other party written notice setting forth its proposed amendments or items that it desires to be re-evaluated no more than 180 days nor less than 90 days prior to the end of the fifteenth year of this franchise period. The purpose of this notice is to expedite discussions between the Company and the City and shall not be an exclusive list of the first party's issues. Upon delivery of such notice, the City and Company shall meet to attempt to consider the proposed amendments. If the City and Company are unable to agree to amend the ordinance and address other issues by the end of the fifteenth year of the franchise period, either party may terminate the franchise agreement effective on the last day of the fifteenth year of the franchise period. If no written request to amend or terminate the franchise is delivered by either party to the other between 90 and 180 days prior to the end of the fifteenth year of the franchise period, the franchise will continue for another ten (10) years.

Section 2. Nonexclusive Grant. This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any governing body of the City in the exercise of any governmental power which it may have or hereafter be authorized or permitted by the laws of the State of Iowa.

Section 3. Limit of Grant. This franchise is limited to electrical service. No other services shall be provided to the public by the Company hereunder.

Section 4. Regulation. The City reserves to itself the right to make reasonable regulation of the Company's use of the streets and to extend this franchise to other public places upon request of the Company. The Company shall comply with this Code of Ordinances to the extent not inconsistent with the rights, privileges, restrictions and limitation of the Code of Iowa as subsequently amended or changes, and the applicable regulation of the Iowa Utilities Board or applicable federal laws and regulations.

Section 5. Right to Operate and Locate Facilities. The Company shall have the right to erect and maintain all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors and install and place other underground electric system facilities and fixtures for the distribution of electric energy in and through the City. Said facilities shall not unreasonably interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by the authority of the City.

Section 6. Obligation to Relocate. The Company shall, at its sole cost and expense, locate and relocate its installations in, on over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting efficient operation of such improvement.

Section 7. Excavation and Restoration. In making any excavations in any street, alley or public place, the Company shall protect the site while work is in progress with guards, barriers or signals, shall not unnecessarily obstruct the use of the streets and shall back fill all openings in such a manner as to prevent settling or depressions in surface, pavement or sidewalk. Company shall restore the site to the condition it was previous to making the excavation.

Section 8. Tree Trimming. The Company is authorized and empowered consistent with this chapter to prune or remove at Company expenses any tree extending into any street, alley, or right-of-way to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning shall be completed in accordance with nationally accepted safety and utility standards, ANSI A300-2001, American National Standard for Tree Care Operations, and ANSI Z133-2006, Pruning, Repairing, Maintaining and Removing Trees and Cutting Brush Safety Program Requirements, or subsequent revisions to these standards.

Section 9. Indemnification. The Company shall indemnify and hold the City harmless at all times during the term of this franchise from and against any and all claims for injury or damage to persons or property caused by the Company's negligence in the construction, erection, operation or maintenance of its properties and activities performed by the Company or its contractors pursuant to this franchise. However, the Company shall not be obligated to defend, indemnify or hold harmless the City for any costs or damages from the negligence of the City, its officers, employees or contractors. In case of any suit at law being commenced at law against the City, upon any claim for damage arising out of any loss, injury, or damage claimed to have been caused by the Company's negligence during installation, improvement, obstruction or excavation in any street, alley or sidewalk in the City, and which installation, improvement, obstruction or excavation was made or left in, under or upon such street, alley or sidewalk by said Company, its agents, contractors or employees, upon being notified in writing by the City of such action or proceeding, the Company shall appear and make proper defense thereto; and if any judgment or decree shall in any such case be rendered against the City therein, the Company agrees to assume, pay and satisfy such judgment or decree, with costs thereof.

Section 10. Eminent Domain. The chapter grants the Company the right to exercise powers of eminent domain without further authorization from the City.

Section 11. Assignment. The Company shall file in the office of the City Clerk written notice of proposed sale, transfer, disposition or assignment of this franchise or change in ownership of the Company.

Section 12. Notice of Default. If either party determines there is a default under this chapter, the other party shall give written notice describing the default in detail, whether a forfeiture or termination of the franchise will be sought and where curable, a reasonable time to sure the default which shall not be less than sixty (60) days or more than one hundred eighty (180) days.

Section 13. Franchise Fee. The City shall impose a one-percent (1%) franchise fee pursuant to the Code of Iowa, on the gross revenue of the Company, minus any uncollectible accounts, derived from the distribution and the retail sale of electricity by the Company to customers within the current or future corporate limits of the City. The City shall work with the Company to develop a methodology and timeline to implement the franchise fee. Subject to the limitation outlined in Section 17 below, at any time during the franchise agreement, the City Council may amend or repeal said franchise fee by adoption of a subsequent ordinance.

Section 14. Franchise Fee Collection. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee. This information shall include but not be limited to a copy of the City's Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement. City's list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City's verified utility customer service address list.

Section 15. Franchise Fee Administration Costs. The City recognizes that the costs of franchise fee administration are not charged directly to the City and the City and Company agree that the Company may only charge such administrative fees as are provided for in state statute.

Section 16. Annexation. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate limits of the City, commencing on an agreed upon date which is not less than ninety (90) days from receipt of the information required of the City to implement the franchise fee.

The Company shall have no obligation to collect franchise fees from customers in any annexed area until and unless the following have all be provided to the Company by certified mail; such final and unappealable orders or approvals of the City's list of City utility accounts exempt from

the franchise fee in the annexed area, and the City's verified utility customer service address list for the annexed area.

Section 17. Notice. The City shall give the Company a minimum 6-months prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to Section 14 hereof. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. When any such Ordinance increasing, decreasing, modifying or eliminating the franchise fee shall become effective, billings reflecting the change shall commence on an agreed upon date which is not less than ninety (90) days following written notice to the Company by certified mail. The Company shall not be required to implement such new percentage unless and until it determines that it has received appropriate official documentation of final action by the City Council. In no event may the percentage of franchise fee exceed the statutory amount authorized by Iowa law.

Passed and approved this 17th day of March, 2025.

First Reading: March 3, 2025
Second Reading: March 17, 2025
Third Reading: March 17, 2025



Tom Dean, Mayor Pro Tem

ATTEST:



Leslie Brick, City Clerk

I certify that the foregoing was published as Ordinance No. 823 on the 27th day of March, 2025.



City Clerk