

Ordinance No. 717-15

AN ORDINANCE ESTABLISHING A FEE ON GRANTEE OPERATING IN THE TOWN OF FOWLER, CO

BE IT ORDAINED by the Board of Trustees of the Town of Fowler, Colorado as follows:

Section 1. The Town of Fowler, Colorado, (hereinafter referred to as the “Grantor”) hereby establishes a franchise fee on every electric distribution and electric generation company and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing electric distribution plant or systems and/or generating, manufacturing, selling, distributing or generating electricity (collectively, “Grantees,” individually, a “Grantee”). The franchise fee constitutes consideration for the grant of an electric franchise and the use of Grantor’s present and future streets, alleys, avenues, bridges, public rights-of-way and public easements pursuant to the terms of the ordinance granting the franchise. Grantees shall collect from their customers located within the corporate limits of Grantor as depicted on the Map (as defined below) including the Town of Fowler and pay to Grantor an amount equal to three percent (3%) of gross receipts Grantees derive from the sale, distribution or generation of electricity delivered within the present limits of Grantor. Gross receipts as used in this Ordinance are revenues received from the sale, and distribution of electricity, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

Section 2. The amount paid by Grantees shall be in lieu of, and Grantees shall be exempt from, all other fees, charges, taxes or assessments which Grantor may impose for the privilege of doing business within Grantor, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event Grantor imposes any such fee, charge, tax or assessment, the payment to be made by Grantees in accordance with this Ordinance shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within Grantor shall not be deemed to affect Grantees’ obligations under this Ordinance.

Section 3. Grantees shall report and pay any amount payable under this Ordinance on a quarterly basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by Grantor to Grantees.

Section 4. Grantees shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction prohibits such recovery, Grantees will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of Grantor, Grantee may reduce the franchise fee payable for electric distribution to a specific customer when such reduction is required to attract or retain the business of that customer.

Section 5. Within ten (10) days of the date of this ordinance, Grantor shall provide the Grantees with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether their customers reside within Grantor's corporate limits. The Map along with Grantee's Geographic Information System ("GIS") mapping information shall serve as the sole basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if Grantor's corporate limits are changed by annexation or otherwise, it shall be Grantor's sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Grantee. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Grantee's receipt from Grantor of an updated Map including such annexed area, or (b) such time after such Grantee's receipt from Grantor of an updated Map including such annexed area as is reasonably necessary for such Grantees to identify the customers in the annexed area obligated to pay the franchise fee.

Section 6. The Town of Fowler shall provide copies of annexation ordinances to Grantees on a timely basis to ensure appropriate Franchise fee collection from customers within the corporate limits of Grantor as set forth in Section 5 above.

Section 7. Grantor shall have access to and the right to examine, during normal business hours, Grantee's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that Grantor shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by such Grantee to Grantor; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof. Grantor shall indemnify Grantees from claims of any nature, including attorney fees, arising out of or related to the imposition and collection of the franchise fee. In addition, Grantee shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by Grantor or by Grantee as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

Section 8. Governmental Immunity. The Town of Fowler retains all rights provided under the Colorado Governmental Immunity Act. Nothing in this Ordinance is intended, nor shall it operate, to diminish, delegate, divest, impair or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity or character of office including, but not limited to, governmental immunity on behalf of the Town of Fowler, its elected and appointed officials and agents.

Section 9. Any and all Ordinances or portions thereof which are in conflict herewith are hereby repealed, specifically Ordinance 392.

Section 10. This Ordinance shall take effect and be in force from and after its passage and publication according to law.

PASSED, ADOPTED and ordered published the 1st day of June, 2015.

TOWN OF FOWLER

DATED this 1st day of June, 2015.

By: Charles R. Hitchcock
Mayor

ATTEST:

Kelly Lotrich
Town Clerk