

**ORDINANCE #265
DTE ENERGY
ELECTRIC FRANCHISE ORDINANCE**

Adopted: 09/12/00
Effective: 09/21/00

An Ordinance granting a limited, non-exclusive revocable electric franchise to DTE Energy Marketing, Inc.

THE CHARTER TOWNSHIP OF BANGOR, BAY COUNTY, MICHIGAN, HEREBY ORDAINS:

SECTION 1. Grant of Franchise. The Charter Township of Bangor with offices located at 180 State Park Drive, Bay City, Michigan 48706, (“Township”) grants to DTE Energy Marketing, Inc., with offices at 101 North Main St., Suite 300, Ann Arbor, Michigan 48104 (“Grantee”), a limited, non-exclusive, revocable franchise to market electricity through and over existing and future electrical lines owned and operated by another authorized public utility and to conduct a local electrical business as an electric power marketer and third-party supplier of electricity in the Township for a period of ten (10) years.

SECTION 2. Conditions.

A. As an electric power marketer and third-party supplier of electricity, Grantee will not directly transmit or supply electricity, nor impair or attempt to control, occupy, injure or disturb any street, alley, public place, or engage in any construction in any public street, alley, or other public place or right-of-way.

B. Grantee shall, at its sole cost and expense, indemnify, hold harmless and defend the Township and its elected officials, employees, appointees, agents, attorneys and contractors from any and all claims, liability, penalties, liens, charges, obligations, judgements, damages, decrees, losses, costs and expenses which the Township may incur or which may be legally obtained against the Township for or by reason of any act or omission by the Grantee, its personnel or agents in the conduct of its electric business in the Township, or resulting from the exercise by the Grantee of any of the privileges conferred by this Ordinance.

C. The Township shall give Grantee prompt notice of any claim, action, suit or proceeding arising from the grant of this franchise.

D. The Township may establish reasonable standards of service, prevent unjust discrimination in service, and impose any other regulations as may be determined by the Township to be conducive to the safety, welfare and accommodation of the public. Grantee shall be and remain subject to all ordinances, rules and regulations of the Township now in effect, or which might be adopted.

E. Grantee shall reimburse the Township for the Township’s costs associated with issuance of this Franchise, including actual and documented attorney fees subject to the provisions of Section 11, below.

SECTION 3. Most Favored Nation. If Grantee or any subsidiary company pays a fee, charge, or other payment of any kind on a periodic basis (e.g., monthly, quarterly, annually, etc.) for an

electric franchise to any municipality in Michigan, then the Grantee shall pay to the Township a fee computed in the same manner as the fee is computed in the other municipality (e.g., if the fee in the other municipality is computed on a percentage of revenue, the same percentage shall be applicable and paid to the Township. If such fee in the other municipality is computed on the lineal measure of service, the same unit price shall be applicable and paid to the Township). A one-time charge prior to and for the installation of such new service shall not be considered a periodic fee unless the charge is unreasonably higher than that paid to other municipalities. If fees are paid by the Grantee to more than one municipality, then the computation of the fee for the Township shall be based upon the method producing the largest fee. The Township shall have the right, at its own expense, to audit the books and records or review audits of the books and records of the Grantee to determine whether and what extent a fee is due. Any additional fee found due as a result of the audit or review shall be paid by the Grantee. If the additional fee is greater than two percent (2%) of the total annual right-of-way fee which should have been paid for any calendar year, the Grantee shall pay the Township's cost for the audit.

SECTION 4. 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 ordinance: Comprehensive General Liability, including Completed Operations Liability, Independent Contractor's Liability, Contractual Liability coverage and coverage for X, C and U hazards in an amount no less than Five Million Dollars (\$5,000,000.00).

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

SECTION 5. Interpretation. Nothing in this Franchise shall be construed to alienate the title of the public in and to any highway, street, alley or public place. Nothing in this Franchise shall be construed in any manner as a surrender by the Township of its legislative power with respect to the subject matter of this Franchise or with respect to any other matter or in any manner limiting the right of the Township to lawfully regulate the use of any highway, street, alley or public place in the Township.

SECTION 6. Limitations. Nothing in this Ordinance shall be construed as a waiver by Grantee of any rights under state or federal law. 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. If so requested by the Township, Grantee shall provide the Township with copies of all documents which Grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence Grantee receives from the Michigan Public Service Commission that relate to this Franchise. Grantee shall permit Township inspection and examination of all records that relate to this Franchise that Grantee is required to maintain or file under Michigan Public Service Commission rules and regulations.

SECTION 7. Assignment. This Franchise may not be sold, leased, assigned, transferred or used by any party other than the Grantee without the consent of the Township.

SECTION 8. Acceptance. Upon acceptance and publication, this Ordinance shall constitute a contract between the Township and the Grantee.

SECTION 9. Revocation. This Franchise shall be revocable, upon thirty (30) days written

notice to the Grantee, by the Township, in the event of Grantee's misuse or failure to comply with the provisions of this Franchise.

SECTION 10. Severability. Any and all sections, terms, provisions, or clauses of this Franchise shall be deemed independent and severable. If any court of competent jurisdiction holds any section, term, provision, or clause void or invalid, all remaining sections, terms, provisions, or clauses not held void or invalid shall continue in full force and effect.

SECTION 11. Consideration. In consideration of the Township granting this Franchise, Grantee agrees to reimburse the Township for actual expenses incurred by it or its legal counsel for drafting this Franchise in an amount not to exceed Two Thousand Dollars (\$2,000.00) payable within thirty (30) days of the effective date of this Franchise.

The above Ordinance was adopted at regular meeting of the Township Board on the 12th day of September, 2000, and shall be published in the *Bay City Democrat and Legal News* on or before the 21st day of September, 2000.