

ORDINANCE NO. 88-1

ORDINANCE OF THE TOWN OF OPHIR, COLORADO GRANTING A FRANCHISE TO THE SAN MIGUEL POWER ASSOCIATION, INC., TO OPERATE AN ELECTRIC POWER UTILITY WITHIN THE TOWN AND AUTHORIZING THE USE OF STREETS, ALLEYS AND OTHER PUBLIC PROPERTY BY SAN MIGUEL POWER ASSOCIATION FOR ITS LINES, POLES AND OTHER FACILITIES.

WHEREAS, the Town of Ophir desires a reliable and continuing source of electric power, and

WHEREAS, San Miguel Power Association, Inc., desires to continue serving the Town of Ophir with electric power within said Town and has caused a notice of its intent to apply for passage of this ordinance to be posted or published as required by law.

NOW THEREFORE BE IT ORDAINED by the General Assembly of the Town of Ophir, Colorado, as follows:

1. Definitions: Whenever the word "Town" is used in this ordinance, it shall designate the Town of Ophir, San Miguel County, Colorado, and whenever the word "Association" is used, it shall designate not only San Miguel Power Association, Inc., a Colorado corporation, but also its successors and assigns.

2. Grant of Authority: Subject to all of the terms and conditions set forth in this Ordinance, and subject to the provisions of Ordinance 80-1 and any amendments or additions thereto, there is hereby granted by the Town to the Association the non-exclusive franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within said Town, facilities for the distribution of electrical energy for lighting, heating, cooling, power or other similar utility purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to sell, furnish and distribute said electricity to the Town and the inhabitants thereof, by means of conduits, wires, cables, poles and structures, or otherwise, on, over, under, along, and across all streets, alleys, bridges, roads, lanes, public ways and other public places in the Town (excepting, however, platted lots owned by the Town) and on, over, under, along and across any extension, connection with or continuation of the same, and on, over, under, along and across all new streets, alleys bridges, road, lanes, public ways and other public

places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town (excepting, however, platted lots owned by the Town). It is not intended, by this ordinance, to grant the right to construct or maintain electrical transmission lines, structures or facilities.

3. Manner of Use-Repair: Subject to all the terms and conditions of this Ordinance and Ordinance 80-1 and any amendments or additions thereto, the Association is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, bridges, roads, lanes, public ways and other public places under the supervision of the Town for the purpose of bringing electrical energy into, within and through the town and supplying electrical energy to said Town and the inhabitants thereof and, in the territory adjacent thereto, provided, however, that Association shall so locate extensions to its present facilities or new facilities so as not to interfere with traffic or the private use of property within the Town of Ophir including platted lots owned by the Town. No pole, tower, structure or appurtenance shall be built or located within the Town of Ophir until the Association obtains the written approval of the Town, but such Town approval shall not be unreasonably withheld so as to unduly interfere with the proper operation of the said lines, poles or structures.

4. Indemnification: The Association shall so maintain its electrical equipment and distribution systems as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Association shall indemnify the Town from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent or willful exercise by the Association of the rights and privileges hereby granted; provided that the Association shall have had notice of the pendency of any action against the Town arising out of such exercise by the Association of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same.

At all times during the term hereof, the Association shall, at its own expense, maintain in full force and effect general comprehensive liability insurance against liability for loss or damages for bodily injury, death and property damage occasioned by the activities of the Association under this franchise in amounts at least equal to the dollar limits of governmental liability under the Colorado Governmental Immunities Act, as amended.

5. Extension of Service: All extension of or additions to the Association's facilities made after the date of this Ordinance shall be in accordance with the then current ordinances of the Town relating to underground construction of utilities. Charges for extension of such facilities shall be made in accordance with the then current rules, regulations and tariffs of the Association relating to same. Said rules, regulations or tariffs applicable to the Town of Ophir shall be the same as those applicable to other towns in the Association's service area.

6. Quality of Service: The kind or quality of service to be furnished by the Association hereunder shall conform to standard electrical engineering and operating practices and shall be equivalent to that furnished to other municipalities in the Association's service area which are similarly situated to the Town of Ophir.

7. Rates/Regulations: The Association shall furnish electrical energy within the corporate limits of the Town or any addition to the Town and to the inhabitants and any person or persons or corporation doing business in the Town or any addition thereto at the rates and under the terms and conditions set forth in rate schedules, standards for rules and regulations and service connection and extension policies as are effective from time to time as determined in accordance with the laws and regulations of the State of Colorado and the rules and regulations of the Association, all of which collectively are hereinafter referred to as "the Association's tariffs" or "the Association's rules and regulations". Those tariffs, rules and regulations which are applicable to Ophir shall be equivalent to those applicable to other towns in the Association's service area.

8. No Discrimination: The Association shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within as established classification would be entitled.

9. Franchise Payment: For the rights and privileges granted by this Ordinance to the Association, the Association agrees to pay to the Town a sum equal to ten percent (10%) of the gross revenue derived by the Association from the sale and use of electrical power and

energy within the corporate limits of the town, said payments to be in lieu of any municipal, occupation or license tax upon the Association, its property or business. The term "gross revenue," as used herein, shall be construed to mean any revenue of the Association derived from the sale or use of power or energy within the Town beginning with the effective date of this Ordinance. It is further agreed that all amounts to be paid to the Town as a franchise fee shall be charged and collected by the Association, as a portion of its normal billing procedures, to the individual users within the Town of Ophir.

10. Reimbursement to the Association: It has been agreed, separately, that the Association will reroute its existing high-voltage transmission line, which now passes through the Town, to a location west, north and east of the Town. It is further acknowledged by the parties that the estimated cost of reconstructing the transmission line, in its present location, through the Town is \$75,000.00 and that the estimated cost of reconstructing the transmission line in the location outside the Town is \$320,000.00, for a net difference of \$245,000.00. The ten percent (10%) fee for which provision is made in Section 9 above, shall be retained by the Association, beginning with the next billing period following the effective date when the project is completed, that is, when the new line is energized, so long as it is collected, until such time as the total of such fee is \$245,000.00. Thereafter such fee shall be paid by the Association to the Town. The Association shall, at all times, keep such books and records as are sufficient to enable the Town to verify the total fee which has been collected. The Town, its agents and employees, shall have the right of full access to such records of the Association as is necessary to ascertain the amounts which have been paid. When the Association has been fully reimbursed, in the manner specified, the Association shall begin to make quarterly payments to the Town of the amounts collected. The payments will be due not later than the 25th day of the month following the preceding calendar quarter.

11. Term-Effective Date: This Ordinance shall become effective as provided by law, thirty (30) days after its publication following final passage and shall remain in full force and effect until the full amount specified in Section 10 has been reimbursed and, thereafter, until it is revoked by at least 12 months written notice from one party to the other.

12. Acquisition by Town: It is agreed and understood that the Town reserves the right to purchase or condemn the electrical distribution system of the Association in the manner provided by law. Any such acquisition shall not, however, affect the obligation to reimburse or to collect franchise fees, as set forth in Sections 9 and 10 above.

13. Removal: Upon the expiration of this Franchise, if the Association shall not have acquired an extension or renewal thereof and accepted same, it is hereby granted the right to enter upon the streets, alleys, bridges, roads, lanes, public ways and other public places of the Town for the purpose of removing therefrom any or all of its structures, conduits, cables, poles and wire or equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said conduits, cables, poles, wires and equipment, the Association shall, at its own expense and in a workmanlike manner, refill, and/or repair to the standards then in effect in the Town, if any, any excavations or damage that shall be made by it in gravel or paved streets, alleys, bridges, roads, lanes, public ways and other public places after the removal of such facilities.

14. Assignment: Nothing in this Franchise shall be so construed as to prevent the Association from assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of the Franchise.

15. Severability: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, except for the requirement to pay franchise charges after construction of the transmission facilities described herein, such invalidity shall not effect other provisions or the application of this agreement which can be given effect without the invalid provision or application and to this end the provisions of this agreement are severable.

PASSED THIS 22 DAY OF March, 1988.

TOWN OF OPHIR

SAN MIGUEL POWER ASSOCIATION

BY: John Bryor
John Bryor
Town Manager

BY: _____

ATTEST:

Robin Magee
Robin Magee