

**ORIGINAL**

ORDINANCE NO. 2003-O-03

AN ORDINANCE GRANTING TO PEDERNALES ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC LIGHT, HEAT AND POWER FRANCHISE, AND REPEALING ALL PREVIOUS ORDINANCES OF THE village of Volente, TEXAS, GRANTING A FRANCHISE FOR SUCH PURPOSE

BE IT ORDAINED BY THE CITY COUNCIL OF THE Village of Volente, TEXAS:

Section 1: That there is hereby granted to Pedernales Electric Cooperative, Inc., its successors and assigns (herein called the "Grantee"), the right, privilege and franchise until February 1, 2023, to construct, maintain and operate in the present and future streets, alleys, and public places of the Village of Volente, Texas and its successors, electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, poles, wires, transmission lines and other structures and telephone wires), for the purpose of supplying electricity to the said City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

Section 2: Poles, structures and other appurtenances shall be so erected and maintained as not to interfere unreasonably with traffic over streets and alleys.

Section 3: In addition to the rates charged for electric service, Grantee may make and enforce reasonable charges, rules, and regulations for service rendered in the conduct of its business. The Village of Volente recognizes and acknowledges that the members of Grantee agree to abide by all rules and regulations of Grantee as members/customers and nothing in this ordinance should be construed to relieve any member of its obligations to Grantee or to abridge its rights of membership in Grantee. Grantee agrees to apply its policies, rules, regulations, and tariffs in a fair and uniform manner when providing electric service to its members who reside within the limits of the Village of Volente.

Section 4: In the event of injury to any person or damage to any property by reason of Grantee's construction, operation, maintenance, or replacement of

Grantee's electric distribution system within public rights-of-way, Grantee shall indemnify and keep harmless the Village of Volente from liability in connection therewith, except to the extent such injury or damage is attributable to the Village of Volente negligent act or omission. Grantee has the sole right to control the defense and settlement of any claim or legal proceeding that gives rise to a right of indemnity under the immediately preceding sentence, In the event of injury to any person or damage to any property by reason of the Village of Volente construction, operation, or maintenance of the public rights-of-way and facilities of the village of Volente within the public rights-of-way, the Village of Volente shall indemnify and keep harmless Grantee from liability in connection therewith, except to the extent such injury or damage is attributable to Grantee's negligent act or omission.

Section 5: If the Village of Volente abandons any public rights-of-way in which Grantee has facilities, such abandonment shall be conditioned on Grantee's right to maintain its use of the former public rights-of-way and on the obligation of the party to whom the public rights-of-way are abandoned to reimburse Grantee for all removal and relocation expenses if Grantee agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way.

Section 6: Subject to the ordinances of the Village of Volente, grantee shall have the right, license, privilege, and permission to trim trees and bushes upon and overhanging the streets, alleys, sidewalks, rights-of-way, and public places of the Village of Volente so as to prevent the branches thereof from coming in contact with the wires and cables of Grantee.

Section 7: This franchise is intended for the sole benefit of the Village of Volente and Grantee and shall not be construed to create any right, benefit, or cause of action in any third party.

Section 8: From and after the effective date of this agreement, the Grantee will pay to the City for use of city streets, alleys, and public ways to deliver electricity to retail customers two percent of the gross receipts of the Grantee from the retail sale of electric energy within the City during that same period. Should Grantee elect to

implement customer choice, as provided in Chapter 41, Utilities Code, then the Village of Volente, being a newly incorporated municipality, may thereafter adopt and collect compensation based on the same rate per kilowatt hour that is collected by any other municipality in the same county that is served by Grantee, as provided in §33.008(g), Utilities Code. Either amount will be in lieu of any other tax or increased rate or other imposition, assessment, or charges, except ad valorem taxes.

Section 9: The Grantee shall file its written acceptance of this franchise within sixty (60) days after its passage and approval.

Section 10: This franchise is not exclusive, and nothing herein shall be construed so as to prevent the Village of Volente, Texas from granting other like or similar rights and privileges to any other person, firm or corporation consistent with applicable state law.

Section 11: When this franchise ordinance shall have become effective, all previous ordinances of the Village of Volente, Texas granting a franchise to the Grantee for electric light, heat and power purposes, shall be automatically canceled and annulled, and the same, together with any existing street rental agreement between the City and the Grantee, shall be of no further force and effect.

PASSED AND APPROVED this 19 day of August, 2003.

  
Mayor

ATTEST:

  
Secretary

SEAL

